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International Court of Justice

OFFICIAL TRANSCRIPT OF THE INTERNATIONAL MILITARY TRIBUNAL
IN THE MATTER OF THE UNITED STATES OF AMERICA,
THE FRENCH REPUBLIC , THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND, AND THE UNION OF
SOVIET SOCIALIST REPUBLICS AGAINST HERMANN WILHELM
GOERING ET AL, DEFENDANTS, SITTING AT NURNBERG,
GERMANY, ON 27 AUGUST, 1946, 1000-1700,
LORD JUSTICE LAWRENCE PRESIDING.

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DR. LATERNSER: Mr. President, I should like to take two minutes of the High Tribunal's time. Yesterday after the conclusion of the interrogation of the witness Schreiber I received a written report to the effect that, first of all, reserach work as far as bacteriology was concerned, that these research materials works were limited to defense, and that at t request of the military medical department beginning with autumn of 1943, all means were to be exhausted to the OKW and particularly through Field Marshal Keitel, that there was a rejection on their part, that this had be prohibited, and that this work was to be considered in no way.

This material I gathered from a letter which was put on my desk yesterday, a letter which I read last evening for the first time. These two points which I have just stressed can be proved by Col. Buerker of the General Staff who at present is interned in the camp at Dachau.

I apply that we summon this witness and confront him with the witnes Schreiber. I assume that this officer was that Colonel who was the presid of the secret session mentioned by the witness Schreiber. The witness is at Dachau. He could appear before this court tomorrow. The interrogation wh ch I would like to carry on would take, at the most, twenty minutes, an I consider the bringing of this proof absolutely essential in the interest of truth. I am now submitting my application in writing.

THE PRESIDENT: The Tribunal will consider your application. Perhaps the Tribunal ought to hear if the Prosecution have anything to say in answer to the application made by Dr. Laternser. The Tribunal would als like to see the report and the letter to which Dr. Laternser referred.

SIR MAXWELL FYFE: If My Lord will just allow me a moment until I see Col. Smirnov --

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THE PRESIDENT: Certainly.

DR. LATERNSER: The author is Gen. Warlimont, who at present is at Nurnberg. He wrote this letter on the 23rd of August. He wrote it here in Nurnberg. and I received it yesterday. I found it on my table after I came down from the session. I put it in my brief case without reading it. I noted the contents the first time when I arrived home yesterday.

Perhaps, I might call the attention of the High Tribunal to the fact that in this letter we hear that after the publication of the intentions along bacteriological lines over the radio, this Col. Buerker whom I asked as a witness came to Warlimont, who was at Dachau at the time, and told him those factswhich took place and I have presented now. But a few days ago General Warlimont was brought back to Nurnberg. These are the matters connected with this point.

THE PRESIDENT: What is it ?

DR. LATERNSER: I was referring, Mr. President, to this letter writt by Gen. Warlimont in which the General tells me the statements which Col. Buerkermade to him a few days ago in the camp at Dachau. These statement I set forth directly and I shall be very happy to submit this letter to the High Tribunal.

SIR DAVID MAXWELL FYFE: There are two points that occur to me. First, if Dr. Laternser would let us see the letter, it might be possible shorten the matter in that way, to make some admission as to the statement in the letter. Otherwise it might be convenient to see an affidavit from the officer and know what he was going to say before we occupy the time by having him examined. If Dr. Laternser would agree to the Prosecution havi the letter translated and examined, we should be able to make a communicat to him and, if necessary, to the Tribunal in the course of the day.

THE PRESIDENT: That seems a convenient course, and particularly in view of the fact that the Tribunal expect to finish the entire hearing of the case this week, certainly by Saturday evening, and it will be, therefore, very difficult to get an affidavit by this Col. Buerker before that time. Therefore, if the Prosecution are able to agree that the Colonel would give that evidence, that probably would be the best way of dealing w the matter.

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SIR DAVID MAXWELL FYFE: If your Lordship please, then if Dr. Laternse would allow us to have the letter, we will have it translated and looked into in the course of the day

THE PRESIDENT: Yes.

DR. LATERNSER: Mr. President, if the witness can be called here through a request by telephone, then I can take his affidavit here or interrogate him here. That would be the quickest way. If I have to write to the camp first in order to get the affidavit that way, that would take more ti Mr. President. I assume that the telephonic connection is such that we can call Dachau today to have the witness brought here, and then we can see further.

THE PRESIDENT: We will hear first what the Prosecution say after the have seen the letter.

COL. PROKROVSKY: My Lord, I would like to report that I tried to satisfy the possibility of confronting the witness of Dr. Laternser with Schreiber, but this possibility, unfortunately, has been excluded because Schreiber has been sent back into the camp of prisoners of war. In this case it is impossible to confront the two witnesses because Dr. Laternser presented his request too late. The Soviet Prosecution doesn't think, therefore, that it would be advisable to call the witness requested by Counsel Laternser, so much so that the witness requested by Laternser does not refute the fact itself that there was a secret session of the OKW. That is why I thought it necessary to report to the Tribunal on the part of the Soviet Prosecution.

THE PRESIDENT: The Tribunal will await the communication from the Prosecution and they will consider the matter. Dr. Gawlik.

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DR. GAWLIK: May it please the High Tribunal: Yesterday I paused wi the question whether it would be possible at all to determine those pre- r quisites which are necessary in order to declare an organization criminal. I shall continue.

Statements made hitherto may lead to the conslusion that the evidence of guilt cannot be summarily determined by drawing conclusions from the nomber or crimes and tyc type of crime committed, from the knowledge of all the meml of these deeds and from their consciousness of illegality. It is rather necessary, that the proof of the knowledge and consciousness of illegality should be considered in special proceedings in each individual case of a nemb r of the organizations, so that on account of the circumstances the individual members would be given the opportunity to reply to them. Should the members ever have had knowledge of real facts of individual criminal acts no proof is given that the knew that their or anizations were involved therei

Now, I shall turn to the next paragraph.

A condemnation of the organizations is furthermore in opposition with the principle of penal law nulla poena sine lege. This principle has alrea been treated in detail by the defendants of the principal accused. I shall not repeat these statements but only point out briefly the following points:

In his speech of indictment on 29.11.1945 the American Chief Prosecutor has said that the defendant could not invoke this principle because they had themselves transgressed it. This argument in no way concerns the members of the Organizations becau e the members had no influence on the legislation but were themselves objects of the legislation.

The Prosecutor of the Union of Socialist Soviet Republics has pointed o in his final speech on July 29, 1946 in the discussion of this principle, th the Charter of the International Military Tribunal is an unviolable law and absolutely had to be carried out.

The Charter is however in no way violated and shall also be carried out if the Tribunal considers the principle nulla poena sine lege and does not condemn the organization, because paragraph 9 of the Charter is merely a can prescription. The Chief Prosecutor of the Union of Socialist Soviet Republ has said further that the Charter represents principles which are contained i

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a succession of international agreements and in the legislation of all civilized peoples.

It merely appears from the international agreements and laws of civilized peoples that punishable offences must be judged by individual proceedings.

The principle of collective judgment of communities of persons was up to now unknown in international law. On the contrary it is denied, as said before, by the science of international law.

Until the First World War it was the custom to include in peace treaties amnesty clauses for war crimes committed. After the First World War the general principle developed that individual members of fighting forces might personally be made responsible after the war for violations of war laws. I refer to Fenwick in International Law, 1924, para 578.

The declaration of the chiefs of stateof the United States of America, Great Britain and the Union of Socialist Soviet Republics of 2 November 1943 mentioned by the Prosecutor of the Socialist Soviet Republics orders expressly that individuals shall be made responsible. The declaration contains no statement to the effect that the collective condemnations of communities of persons is permissible.

Paragraph 9 of the Charter is therefore not the expression of an internationally admitted legal maxim. This clause on the contrary creates a new law and cannot be made applicable with retroactive force, for instance for the time since 1921 as purposed by the Chief Prosecutor of the United States or even for the time from 1935 on as purposed by the Prosecutor of the Union of the Socialist Soviet Republics in his final speech on 29.7.46.

The condemnation of the organisations is therefore in opposition to the principle nulla poena sine lege.

In the 2nd section of Park I, I come to the discussion of the questions of procedure resulting from Para 9 of the Charter. In legal procedure, according to paragraph 9 of the Charter, an organization of group may be said to be criminal

(a) in a trial against a member of such organization or group and

(b) in connection with any action by reason of which the accused is condemned.

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Both these hypotheses must be realized. Of the principal defendants, only the defendant Kaltenbrunner, Chief of the Security Police and SD is involved, as member of the SD.

It can be gathered from the words "in connection with any action by reason of which the accused is sentenced" that every action of the member of the organization or group is sufficient to declare the organization or group as criminal.

This cannot be the meaning and purpose of this definition, as I should like to illustrate by the law of the United States of 28 June 1940 already quoted.

When persons belonging to one of the associations mentioned in the Act of 28 June 1940 are arraigned before a tribunal in several different proceedings, an admittedly extensive examination of evidence, but doubtful in its results, must be effected in each proceeding as to whether the association to which the person belongs fulfils the primary conditions contained in the above legal stipulations.

Then it could happen that in one trial it is established that the organization had pursued the purposes named in the law of 28 June 1940, while in other trials the result of the testimony is not considered as sufficient.

In order to avoid these difficulties it could be decreed by a provision of the law that the trial be held against one or several members of the organization, the other members who have not yet been accused are given the possibility of a legal hearing and -- if a member is condemned on account of his membership in an organization within the meaning of the decree of 28 June 1940 -- the Tribunal makes the declaration, to take effect for all members of the organization, that the organization fulfils the purpose mentioned in the decree of 28 June 1940.

Such provisions would achieve the following:

(1) the testimony on the aims, tasks and activities of the organization would be taken only once, and

(2) contradictory decisions on the objective tasks, aims and activities of the organization would be avoided.

This purpose is apparently also the intention of paragraph 9 of the

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Charter. The situation is to be avoided whereby the Military Tribunal in the individual occupation zones in the proceedings against the members of the accused organizations would have to examine the question of the character of the organization each time and perhaps come to contradictory decisions.

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THE PRESIDENT: Dr. Gawlik, are you arguing that if any individual were tried under this Act of June, 1940, that the declaration of this Court under Article 9 would have any effect in the trial under that Act of June, 1940? Is that your argument?

DR. GAWLIK: No, Your Lordship. The stipulation put down in Article 9, I wanted to explain that in line with the Decree of June of 1940. The Law of June, 1940, is something quite different and has no connection with Paragraph 9. I wanted to explain the Law of June, 1940, which was mentioned by the Chief American Prosecutor, and I wanted to explain what importance a stipulation would have such as is set down in Paragraph 9, Article 9.

THE PRESIDENT: What importance are you suggesting that it would have?

DR. GAWLIK: Paragraph 9, as I shall set forth, has the following significance: One member has to be accused because of the membership in an organization, an organization which persues crimes according to Article 6 of this Charter. Then, in this trial against one member the entire fact has to be cited against this member because of his membership in the organization, and then the facts that have been ascertained, the findings that have been set up because of the aims and activities and purposes of the organization; if a sentence is reached, it can be used in the trials against the other members. The objective facts, not guilty or guilty is associated with an individual.

Your Lordship, may I cite an example: Here one member of the SD would have to be selected and this member would have to be accused, as I shall set forth, because of his membership in the SD, that he was a member of an organization which permitted crimes against the peace, the laws of war, and against humanity. If this member now is punished because of his membership in an organization of that nature, then you are objectively determining that the SD is an organization of that kind, then the findings can be used to deal with the activities of the SD and use the findings against the other members.

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THE PRESIDENT: Well then, I think I follow that argument based upon the first para graph of Article 9, is that right? It is based upon your construction or your interpretation of the first paragraph of Article 9?

DR. GAWLIK: Yes.

THE PRESIDENT: Are you saying that a decision of this Tribunal upon that would have any importance or effect upon a trial under the act of 1940?

DR. GAWLIK: No, that is only an example.

THE TRIBUNAL (Judge Biddle): The Act of 1940 is a sedition law, is it not? That is the Sedition Law of 1940?

DR. GAWLIK: Yes.

THE TRIBUNAL (Judge Biddle): You say the Prosecution, as they did in the argument, depended on tha t Act to show that this type of group condemnation was used in the other countries, they made that analogy?

DR. GAWLIK: Yes, I know --

THE TRIBUNAL (Judge Biddle): A nd the reason you say that is that if one individual were tried under the Act of 1940 -- follow?

DR. GAWLIK: Yes.

THE TRIBUNAL (Judge Biddle): First it would be necessary to show that he belonged to an organization of which the purpose was to overthrow the government by force or violence, right?

DR. GAWLIK: Yes.

THE TRIBUNAL (Judge Biddle): Now, the Court then would have to decide first the purposes of the organization, right?

DR. GAWLIK: Yes.

THE TRIBUNAL (Judge Biddle): Now, you say also that is a second individual were, at a later time, tried under that Act that the government would again have to prove --

DR. GAWLIK: Yes.

THE TRIBUNAL (Judge Biddle): --that the purposes of the organization was to overthrow the government by force or violence, right?

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DR. GAWLIK: Yes.

THE TRIBUNAL (Judge Biddle): Therefore, that the analogy is not true because the finding as to the organization in the first trial against the first individual would have no effect --

DR. GAWLIK: Yes.

THE TRIBUNAL (Judge Biddle): -- on the second trial against the second individual, and that that principle is inherent in all Anglo-Saxon Laws because the finding of a fact against one individual cannot affect the trial against the second individual, is that your thought?

DR. GAWLIK: Yes.

Certainly, it would be sufficient for the accomplishment of this purpose, if the legal effect went only as far as the objective determination of the tasks, aims, and activities of the organization and the determination of guilt were left to the subsequent proceedings.

With regard to Law No. 10, as it was pointed out already, the condemnation of the organizations according to Par. 9 of the Charter, contains not only the objective statement of the aims, tasks,

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an activities of the organizations, but beyond this purpose the confirmation of the guilt of the members.

Par. 9 of the Charter has consequently besides the materially - legal confirmation of objective and subjective factual evidence also a legal criminal meaning.

This juridical aim, which is evidently pursued by par. 9 of the Charter can, however, only then be reached if this decision is thus interpreted that the member is sentenced on account of this membership of an organization, whose aims or expedients are punishable according to point 6 of the Charter and not on account of any action.

Another interpretation would have no meaning and no purpose. Only a condemnation of the defendant Kaltenbrunner on account of his membership of such an organization could, therefore, according to par. 9 of the Charter, justify the condemnation of the SD. In regard to this statement the formal hypotheses for the application of par. 9 of the Charter do not seem suitable to me.

It would be supposed that the defendant Kaltenbrunner would have to be charged on account of his membership of the SD as a criminal organization within the meaning of the Charter, and that in this proceeding against the defendant Kaltenbrunner the character of the SD willbe examined. In this case only would there be a case at hand - as the Chief Prosecutor of the United States has stated - in virtue of which the criminality of the SD might be examined. Such a charge has, however, not been made against the defendant Kaltenbrunner.

The defendant Kaltenbrunner has not been accused for belonging to the SD as a criminal organization, but is to be sentenced for other punishable offences.

Therefore, taking the statement of the American Prosecutor as a basis, it must be considered as inadmissible that for the proof of the criminality of the SD evidence has been produced, which has no connection with the criminal actions for which the defendant Kaltenbrunner has been charged.

Finally, it must still be proved which connection must exist between the period during which the accused member belonged to the organization

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and the period for which the organization is to be declared criminal. This purely legal question is completely different from the question of the period during which an organization was criminally active. Here, the matter is only as follows: Can, in the proceeding against a defendant, the organization of which he was a member, be declared criminal also for the period during which he did not belong to the organization?

According to the statement made by the American Prosecutor, the criminality of the organization has to be tested only on the strength of the defendants action. Such action of the defendant confines the examination, also from the standpoint of time, to the question as to whether the organization can be declared criminal. The evidence in the proceedings against an accused member can only justify the decision regarding the organization for the period during which the defendant belonged to the organization.

This limit in time is justified also for the following reasons: He who shall be sentenced, has the right to be heard. This right to be heard is not met by the making of statements before the Court. On the contrary it includes the right to participate in the whole proceedings. According to Par. 9 of the Charter, this right to participate in the entire proceedings is obviously not to be annulled, but restricted to only one person of the Organization mentioned, in order to save time, as they started from the principle that the depositions of further members as to the aims and tasks and activities of the Organization were cumulative. A member who did not belong to the Organization during the whole period for which the Organization is to be declared criminal, can define his attitude towards the question of the aims, tasks and activities of the Organization only for the duration of his membership. According to the principle of legal hearing it is therefore necessary that a member participate in the proceedings as a defendant, if he was a member of the Organization during the whole period for which the Organization is to be declared criminal.

For these judicial reasons also the Organization can be declared criminal only for the period during which the defendant was a member of the Organization. Should an Organization be declared criminal for the entire

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duration of its existence, then a member must be indicted who belonged to it during the whole period.

For judicial reasons the SD, therefore, could be declared criminal only for the period during which the defendant Kaltenbrunner was Chief of the SIPO and the SD, that is, since January 1943.

The crimes with which Offices II, III and V are charged must have been committed during this period.

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DR. GAWLIK: I now come to the real evaluation of the facts based upon the results of the evidence. This is my second main part. I shall deal with general statements first of all. The Prosecution has submitted a large number of documen in which the SD is mentioned, thus wishing to prove that the offices III and VI are responsible for the SD. However, the prosecution itself has said that common and even in orders and decrees "SD" was used as an abbreviation for [illegible] and SD I refer to record page 1832 (German).

Even according to the prosecution, a document mentioning the SD is no proof that this deed must have been committed by members of offices III and VI. These may just as well be deeds of the Sipo as well. this has been proved by the evide

The witness von Manstein. one of the highest military leaders of the former German Wehrmacht was heard before the Tribunal. This witness spoke repeatedly of the SD in his examinations before the Tribunal and the Commission. When I asked the witness what exactly he understood by SD, he declared that he was not quite certain. To further question whether he believed it to be the offices III and VI he answered in the negative.

The shooting of a commando troop in the north of Norway was mentioned in the examination of the defendant Jodl on the witness stand. The Defendant Jodl was told that the prisoners had been shot by the SD, whereupon the defendant Jodl was told that the prisoners had been shot by the SD, whereupon the defendant Jodl declared, and I refer to Page 11014, in German, literally, "Not by the SS, that is not correct, but by the Security Police."

I furthermore draw your attention to the affidavit of the defendant Keitel- SD No. 52 - who declared under oath that he only realized during the trial at Nurnberg that the opinion reigning in military circles also concerning the tasks and competence of the SD as an executive police organ was not correct. Therefore in the military language and decrees, the SD was mentioned when the competent police organ executive power was meant. Keitel declared further that concerning the competencies of the SD an erroneous conception had existed which lead to the wrong interpretation of the abbreviation "SD"

In this connection also I refer to the affidavit of the former chief of General Staff of the Luftwaffe, Koller, document No. 58, page 119 in document book Jodl. In this affidavit Koller reports upon a conference with Hitler to

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discuss the situation. At this conference Hitler gave the order to transfer all bomber crews of the different Allied Armies to the SD and to liquidate them through the SD. Then Koller describes a conversation he had with Kaltenbrunner after this conference. According to Koller, Kaltenbrunner made the following statement during this conversation. "The Fuehrer's conceptions are quite erroneo The tasks, too, of the SS are constantly being misinterpreted. Such things are no concern of the SD."

The French Prosecution has submitted a great number of documents in which the SD is mentioned. I have shown these documents to the witness Knochen, who was examined before the Commission. Knochen was the commander of the Security Police and the SD in France.

In connection with these documents he said, that there had been a confusion of words, and that SD should be interpreted as "police" Upon my question:

"What does transfer to the SD?" The witness Knochen answered literally

"This means transfer to the executive section IV of the Security Police."

I showed the witness, Dr. Hoffmann, document 526-PS before the Commission. Commission Record page 474. Hoffmann was an official of the Security Police and has never belonged to the SD. The document 526-PS concerns the carrying out of Commando order in a Norwegian Fjord. This report states: Fuehrer decree carried out by SD.

Upon my question to the witness Hoffmann, what was to be understood by SD, he answered literally. "Since this seems to be an executive measure, SD must here be interpreted as Secutiry Police, since the Wehrmacht often mixed up the two meanings."

The Prosecution has furthermore submitted document No. 1475-PS.
This is a report of the commander of the prison of Minsk, dated from the 31 May 1943, in which he reports that Jews had been brought into the prison by the SD Hauptscharfuehrer Ruebe whose gold bridges, fillings and crowns had been removed from their teeth. In this connection I have submitted affidavit SD No. 69 of Gerty Breiter a stenographer employed with the commander of the Security Police and the SD in Minsk. Gerty Brieter states that Ruebe was an official of the State Police, and that the SD at Minsk had nothing to do with the Jewish affairs in Minsk. The sole activity of the SD in Minsk was to make reports upon the general moods and opinions of the public. There were no SD prisons in Minsk.

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This confusion of words is apparently due to the fact that some members of the SS special Formation SD, who, as I said, in the introduction, was something entirely different from the SD Intelligence Service, were the SS uniform with the SD insignia.

In the territories occupied by Germans, all members of the RSHA, including all members of the STAPO, and Kripo, even those who were not members of the SS or SS candidates, were the SS uniform, with the SD insignia. Thus every member of the Sipo was characterized as an SD man, and measures carried out by the Security Police, were considered to be SD measures. Please refer to the Transcript, Page 14515 (German).

THE PRESIDENT: Did you say then all members of the SS, including t Kripo and the Sipo, were working in the East in the uniform of the SS with an SD badge on them?

DR. GAWLIK: Yes. Yes. The witness has confirmed this, Your Lordship. In this connection I point out that about 90 per cent of all members of Offices III and VI were honorary, and only a small part of them belonged to the SS or were SS candidates, Affidavit SD No. 32. During the war, a large number of the membersef the SD, Offices III and VI, were women. These persons were not entitled to wear the uniform of the SS formation, SD.

According to the sub-divisions of the Trial Brief against the Gestapo and the SD, I shall discuss:

a. The charge of conspiracy.

b. Crimes against peace.

c. War crimes.

d. Crimes against humanity.

I shall now refer to the Conspiracy Charges.

Conspiracy, Statement of evidence III of the English trial brief against Gestapo and SD.

Offices III and VI are accused of having participated in a conspiracy to commit crimes against peace, War Crimes and crimes against humanity.

There are three possibilities for an organization to be in contact with a circle of conspirators:

I. The organization can belong to the circle of conspirators.

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This presumes that all the members of the organization participated in the agreement or the secret plan to commit illegal actions or to carry out legal actions by illegal means.

It must therefore be proved that

(a) Such a plan existed.

(b) All members made this plan on their own.

Second Possibility, Organizations can have the aim and the purpose of supporting participants in a conspiracy. Fir this it is required:

(a) A secret plan or an agreement.

(b) The organization must objectively have pursued the aim of aiding one or more of the participants in the execution of the plan.

(c) All members must have known of it and desired it.

Third Possibility, The organization can be used objectively by conspirators, to carry out the common plan without the members realizing it.

In this case there can be no question of punishable participation of the organization, because the characteristic of a factual state of guilt is lacking. The organization is an unpunished tool and cannot be declared criminal.

On Case I, the Prosecution has submitted that not all participated in th conspiracy, but that all contributed to the offenses, Transcript, page 1690, German text. This indicates that the prosecution does not want to contend that the organizations were participants in the conspiracy. I shall therefore not deal further with this question.

The punishable support of a conspiracy, Case II, also requires

(a) the existence of a secret plan,

(b) the knowledge of the members.

Consequently the existence of a secret plan and the members' knowledge thereof, must be proved.

Hitherto it has in no way been shown that such a plan for the commission of crimes against peace, war crimes, and crimes against humanity actually existed.

This has already been presented in detail by the defense counsel for the principle defenders and I do not want to repeat these statements, but I should like briefly to point out the following:

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A conspiracy cannot be considered proved until evidence is brought

1. When,
2. Where,
3. Between what persons this common agreement was reached, and
4. What its contents were.

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Even if such a plan should have existed, it has been shown in no way that it was known to members of the SD, and that, therefore, they had the purposes in mind of supporting such a conspiracy with their activity. The prosecution has derived the fact that such a conspiracy existed in particular from the so-called key documents. The facts mentioned in these documents were, however, kept strictly secret and were known only to the persons immediately concerned with them. Members of the organizations in question had no knowledge of these things; this can be assumed as known to the Court.

If the fact of a secret plan for the commission of crimes against peace, war crimes, and crimes against humanity arises from the key documents, the members of the SD did not know this, and therefore did not have the intenti of supporting such a circle of conspirators with their activity.

The facts which the Prosecution produced to prove that members of the SD knew of a conspiracy cannot be regarded as "violent", as assumptions, nor as probable assumptions, but at most as light or rash assumptions which are without significance.

Furthermore, I believe that the examination of witnesses and the affidavits have brought proof that members of the SD had no knowledge that a secret plan for the commission of crimes against peace, war crimes, and crimes against humanity existed and that, therefore, there was no intention in the SD to support such a circle of conspirators with their activity.

The SD cannot therefore be condemned for participation in a conspiracy because there is no evidence that

a) A circle of conspirators actually existed, and

b) The members of the SD had knowledge thereof, and by their activity wanted to support a circle of conspirators.

Therefore, in this trial before the International Military Tribunal it does not matter whether the SD supported the SS, the Secret State Police, the Party, or individual persons of the State leadership, unless the Prosecution has brought the proof of the prerequisites which I have indicated:

a) Existence of a secret plan for the commission of crimes according to Article VI of the Charter, and

b) Knowledge of all members of the SD.

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The factual submissions of the Prosecution concerning the cooperation of the SD with the SS, the Secret State Police, or other persons, requires correction.

I shall not read Pages 46, 47, 48, 49, 50, 51, 52, 53 or 54. I shall continue on Page 55 in the second paragraph.

Concerning the aims, purposes and methods of the indicted Office III, I should like to refer to statements made in Document SD 70, the handbook of the Supreme Headquarters of the United Nations of April 1945. There it is said:

"The SD maintained for its purposes a networkof newsmen throughout all fields of life in Germany . . . who were recruited from all social groups and professions. The information gained through the newsmen were used to furnish situation reports . . . Those reports are exceptionally frank and contain a complete and uncolored picture of the mood and attitude in Germany."

The correctness of this is proven by the 649 affidavits submitted in my summary and made by former full-time and honorary workers, trustees for the total area of the Reich and of parts of the Reich.

The aims, purposes and activities of Office VI are shown by the affidavits SD-61, 62, 66 and Document SD-1.

I refer, in regard to Office VI-S, particularly to Affidavit SD-66.

I shall now turn to Section B, Crimes Against Peace, Statement of Evidence V of the English Trial Brief against the Gestapo and SD.

The SD is accused of having staged so-called border incidents before the outbreak of the war to give Hitler an excuse for starting the war. The Prosecution, however, referred to only one border incident in which the SD is alleged to have participated. That is the alleged attack on the Gleiwitzer Radio Station.

The Prosecution made reference to the Affidavit of Alfred Naujocks of November 20, 1945. This is Prosecution Document PS-2751.

The deponent of Document PS-2751, Alfred Naujocks, was heard before the Commission. On that occasion he declared that the attack on the Gleiwitz Radio Station was not included in the aims andpurposes of Offices III and IV. This is in the Proceedings of the Commission, Page 147 of the German text. The witness further testified that no part of Offices III and IV was used for the execution of that border incident in Gleiwitz and that the man who

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with him attacked to the Gleiwitz station did not belong to the SD, Office III, RSHA. This is in the record of the Commission, Page 150 of the German text.

The witness continued to state that by the term "SD men" he did not mean in his affidavit of November 20, 1945 the members of any definite office of the RSHA; common usage of the term "SD men" rather referred to RSHA members of all offices which were subordinate to Heydrich.

The witness further stated that he was charged with the execution of the border incident at Gleiwitz not because he belonged to Office VI and worked there but that exclusively personal reasons made for that decision. The witness testified that on the basis of the conversation he had had with Heydrich he had gained the impression that Heydrich would have given him that assignment even if he had not been a member of Office VI and the SS. The order for the execution of the assignment reached witness Naujocks not through the official channels of the chiefs of Amt III or IV. Those chiefs in question of Offices III and IV had no knowledge of this action. The members of the SD, Office III and Office IV, had no knowledge that the attack was carried out by Naujocks, a member of Office VI. Particularly the members of the SD-Leitabschnit which was in charge of Gleiwitz and the outposts of the SD had no knowledge of this activity and they could not have had because Naujocks had been forbidden to get in touch with any members of the SD whatsoever in that territory.

The statements of the witness have been reaffirmed by witness Sonann and the affidavit SD No. 11 deposed by Professor Dr. Marx.

I also submitted 215 affidavits for the office of the RSHA as well as for all territories of the SD-Leitabschnitts and the SD-Abschnitts, particularly for those situated in the East, Kattowitz, Danzig and Saxonia. Those affidavits testify that the members of the SD duringthe critical time had no knowledge of the faked border incidents or the participation of the SD in them.

Page 59 will not be read. I shallturn to Page 60, which deals with the Einsatzgruppen.

In order to judge whether the SD can be declared criminal on the grounds of the activities of the Einsatzgruppen, the following questions must be examined:

1. Did the Einsatzgruppen A, B, C and D, which were assigned in

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the East to the Army groups, belong to the organization of Offices II, VI or VII?

2. Were parts of these office organizations used in these Einsatzgruppen?

3. Did the Offices II and VI give orders to the Einsatzgruppen to commit crimes against the laws of war and against humanity?

4. Did the members of the Inland Information Service (Office III), or of the Foreign Information Service (Office VI) have any knowledge of activities of the Einsatzgruppen which are crimes in the sense of the charter?

First I must rectify an error. In this trial and before the Commission the Einsatzgruppen have repeatedly been designated as Einsatzgruppen of the SD up to a short time ago. As an example I refer particularly to the records of Keitel, Dr. Best, Hauser and von Manstein. These are in the Record at Pages 7246-47, 14442, 14706, 15003-4, 15007, 15010-11, and 15041. This designation is wrong.

The four Einsatzgruppen employed in the East were designated by A, B, C, and D. They had under them the Einsatzkommandos, which were designated by the numbers 1 to 12. Thus the word "SD" is mentioned neither in the designation of the Einsatzgruppen nor of the Einsatzkommandos. Furthermore, there was no reason for that, since, according to the evidence submitted by the Prosecution, only 3% of their members were part of the SD Offices III or IV. The members of the SD came only eighth in number. I refer you to the statistics found in Document L-180 submitted by the Prosecution. This is in the Record at page 1676 of the German text.

The designation of the Einsatzgruppen is also shown by the distribution of Document D-569, which shows the various relationships. The special kommandos 1-A, 1-B, 2 and 3 were under Einsatzgruppe A. The special kommandos 7-A, 7-B, 8, 9, Moscow, were under Einsatzgruppe B. 4-A, 4-B, 5, and 6 were under Einsatzgruppe C. 10-A, 10-B, 11-A, 11-B and 12were under Einsatzgruppe D.

The setting up of the Einsatzgruppen was not ordered by Offices II, VI, or VII, but by Himmler on the basis of an agreement with the OKH. I refer you to the testimony of Dr. Best, Schellenberg, Ohlendorf, and to Document USA 1557 and Affidavits SD Nos. 41 and 46. This is in the Record at Page 14430, 1896, 1812, 1814, 1815, 1816 and 1818. The evidence has shown

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further that the Einsatzgruppen and Einsatzkommandos were not under the orders of Offices III, VI and VII. I refer to the affidavit of Schellenberg of the 26th of November, 1944, Document USA 557, Affidavits SD Nos. 41, 44 and 46, to the record on Pages 1812-14, and 1850-51, to Prosecution Document I-180, Pages 2 and 3, to the Record at Pages 10906-08, of the German text,and Document PS 2620.

If one considers the constitution of the Einsatzgruppen which is set forth on Page 1676 of the record, one will have to admit, as has been deposed by the witness Hoeppner and the witness Bendt in Affidavit SD No.41 that this concerns an affiliation of some kind of persons who did not belong to the organizations of Offices III, VI or VII. This is shown in the record at Page 14541 of the German text.

The evidence has further shown that no parts of the organizations of Offices III, VI or VII have been employed in the Einsatzgruppen and Einsatzkommandos, and that the Offices III, VI and VII did not issue any orders for the mass destruction carried out by the Einsatzgruppen. I refer to Affidavits SD Nos. 61 and 63, the record of the Commission at Pages 2181 and 2211 of the German text, Affidavit SD No. 41, and particularly the answers to questions Nos. 6 and 9, and to Affidavit SD No.44, to Nos. 4 and 5.

The Einsatzgruppen and the Einsatzkommandos are special units which deviated in their composition entirely from the structure of the Security Police and SD in the Reich itself. I refer further to the statements of Ohlendorf and Hoeppner and to the affidavits SD No.41 and SD No.46. This refers to Pages 1826-27 and 145-4 of the text in German of the record. The witness Best testified on Page 14431 of the German record "They were Security Police Units of a special kind."

It is of decisive significance for the question whether the organization can be declared criminal that no parts of the SD, Offices III, VI or VII, were employed with the Einsatzgruppen, but only individual members were transferred to these Einsatzgruppen as a result of legal regulations. In this connection Hoettl's affidavit of 16 April 1946 seems especially important to me. I emphasize that this is a prosecution document. Hoettl declared in the affidavit mentioned that the membership of the people in

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the SD was inactive during their affiliation with the Einsatzgruppen. I refer to Pages 14504-5 of the German record.

Insofar as members of Offices III, VI and VII were assigned by legal order to the Einsatzgruppen and Einsatzkommandos in the East, I refer for their tasks and activities to the testimony of Dr. Ehlich von Manstein, at Pages 2179 and 2445-47 of the German text of the Commission record, and to the affidavit SD No.69.

The selection of the members of the Security Service for the Einsatzgruppen and Einsatzkommandos was not on the basis of their position and duties in the home offices. For that point I refer to the testimony of Ohlendorf at Pages 1831-32 of the German record, and the affidavits SD No.41 and SD No.45.

Thus I come to the conclusion:

1) Einsatzgruppen A, B, C and D did not belong to the Domestic Intelligence Service, Office III, to the Foreign Intelligence Service, Office VI, or to Office VII.

2) No parts of this organization were used for this purpose, but individual members were assigned to the Einsatzgruppen.

3) The legal position of these persons was the same as, for example that of persons who had been called up for military service. Their affiliation with Offices III, VI, or VII was inactive. They were no longer subject to instructions from their home offices.

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I shall omit the next page, 64, and pages 65, 66, 67. Pages 68 to 71 refer to the Einsatzkommandos in prisoner-of-war camps. Statement of evidence --

THE PRESIDENT: Dr. Gawlik, the Tribunal understands that the SS, the Gestapo and the SD, all disclaim responsibility for the Einsatzgruppen. Could you tell the Tribunal who is responsible for the Einsatzgruppen?

DR. GAWLIK: The Einsatzgruppen were subordinated to -- the responsibility may be seen from my statement on page 61. I should like to refer you to the testimony of Dr. Best, Shellenberg, Ohlendorf, and Document --

THE PRESIDENT: Dr. Gawlik, the Tribunal would like to know who you say was responsible for the Einsatzgruppen. They don't want to be referred to a cloud of documents and a cloud of witnesses. They want to know what your contention is.

DR. GAWLIK: The Einsatzgruppen, in my opinion, were organizations of a special kind which were directly under Himmler, and for the rest, the testimony of the witnesses diverge as to how far they were subordinate to the Commanders-in-Chief.

A part of the witnesses have stated that they were subordinate to the Commanders-in-Chief. Another part of the witnesses disputed this. As far as this question is concerned, I cannot define my attitude.

THE PRESIDENT: Was it possible, according to your contention, for Himmler to control those Einsatzgruppen without any organization, and if it was not, what organization controlled it.

DR. GAWLIK: The Einsatzgruppen had their own head, as may be seen from Prosecution Document L-180 , the Stahlecker report. Stahlecker was the Chief of the Einsatzgruppen A, and this man received his instructions directly from Himmler, and from that I should like to gather that the heads of the Einsatzgruppen were directly under Himmler. That was a parallel organization along with the RSHA for occupied countries.

THE PRESIDENT: Can you tell the Tribunal who were the

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individual men who composed the Einsatzgruppen? Did they consist of SS or SA or SD or the Wehrmacht?

DR. GAWLIK: Your Lordship, the composition of the Einsatzgruppen may be seen on page 1667 of the German transcript. I don't have all of it in my head, but I do know it did contain Waffen SS, criminal police, state police, SD --

THE PRESIDENT: Waffen SS ?

DR. GAWLIK: Waffen SS, criminal police, state police, SD, and on this page, as far as I can recall NSKK is mentioned, and I believe interpreters, but I can't tell you that for a certainty. The various groups are found on this page, your Lordship, which is page 1667.

THE PRESIDENT: The last that I have down is NSKK. Whom did you say after that?

DR. GAWLIK: I beg your pardon?

THE PRESIDENT: I have down Waffen SS , criminal police --

DR. GAWLIK: Yes.

THE PRESIDENT: State police?

DR. GAWLIK: Yes.

THE PRESIDENT: S D?

DR. GAWLIK: Yes.

THE PRESIDENT: NSKK?

DR. GAWLIK: No, your Lordship, those are drivers of motor vehicles. Your Lordship, there is a mistake. NSKK is not participating here.

THE PRESIDENT: I have struck out NSKK. Is there anybody else? Any Gestapo?

DR. GAWLIK: Yes, yes, Gestapo of course. Your Lordship, state police and Gestapo are identical. Interpreters are enumerated in this document. I believe these are the main groups, but at the moment I cannot tell you for a certainty, as I don't recall these details exactly.

THE PRESIDENT: Thank you.

DR. GAWLIK: I beg your pardon, did your Lordship wish to know the members or the Chiefs of the Einsatzgruppen?

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THE PRESIDENT: Well, I meant the memberships.

DR. GAWLIK: Yes, that is quite correct. Your Lordship, I wanted to say in total there were a thousand to twelve hundred men altogether in these four Einsatzgruppen but --

THE PRESIDENT: How many did you say?

DR. GAWLIK: One thousand men to approximately twelve hundred men, and from the SD there were three per cent. That may be seen from the document. Three per cent were from the SD. This is the Document L-180.

THE PRESIDENT: We will adjourn for a recess.

(Recess was taken.)

DR. GAWLIK: Your Lordship, I shall have to correct my statement regarding the Einsatzgruppen in one point. I mentioned Document L-180, which I have obtained in the interval, and the total strength of Einsatzgruppe A was 990 men.

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It was composed as follows: Waffen SS, 34 per cent; drivers, 17 per cent; administration, 1.8 per cent; SD, 3.5 per cent; criminal police officials, 8.8 per cent. These, your Lordship, were apparently native policemen, natives of the occupied territories. Border police, 13.4 per cent; female employees, 1.3 per cent; interpreters, 5.1 per cent; teleprint workers, .3 per cent; wireless operators, .8 per cent. That is Einsatz Group A. As far as I have been informed for Einsatz Groups B, C, and D, no documents are available; but the witnesses have testified that Groups B, C, and D had the same ratio.

THE PRESIDENT: Then it is nearly four times as large as you said?

DR. GAWLIK: Yes, approximately.

THE PRESIDENT: Can you give a date for that constitutionof Group A? What date was that, that constitition of those percentages?

DR. GAWLIK: The Einsatz Groups were formed before the beginning of the campaign, before June, '41, that is.

THE PRESIDENT: When you get down to .3 per cent, thatmust have been at a certain time. It couldn't have remained .3 per cent all the time, could it, or is that an establishment?

DR. GAWLIK: Your Lordship, I don't understand. Which .3 do you mean?

THE PRESIDENT: I meant teleprinter, .3 per cent; wireless, .8 per cent -- did it remain at that exact figure throughout the whole war?

DR. GAWLIK: I assume so, your Lordship.

THE PRESIDENT: The percentages are then matters of what in English would be called establishment?

DR. GAWLIK: They are average figures, your Lordship. They may have altered slightly during the war.

THE PRESIDENT: Very well.

DR. GAWLIK: I beg to apologize, my Lord, but the first figure which I have mentioned before the witness, I hadn't recollected. I had based my statement on the Einsatz Commanders; and that is how I reported it to you.

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Pages 68 up to 71 deal with the Einsatz Commanders in prisoner of war camps, the statement of evidence of the English Trial Brief against the Gestapo, and the SD. Pages 72 to 75 deal with the Kugel Decree, statement of evidence of British Trial Brief against the Gestapo and the SD. Pages 76 up to 79 deal with concentration camps, Statement of Evidence 6-D. Pages 80 up to 83 deal with the deportation, Statement of Evidence of the Trial Brief against the Gestapo and the SD.

Pages 84 up to 89 deal with the Commando order, Statement of Evidence 6-F. Pages 90 to 93 deal with the Nacht-und-Nebel Decree, Statement of Evidence 6-G of the Trial Brief. Pages 94 up to 96 deal with Summary Proceedings Statement of Evidence, 6-H. Pages 97 and 98 deal with the possibility of the plan, 6-J. Pages99 and 100 deal with the shooting of prisoners of the NSD, prisoners at Landom, Statement of Evidence J. Pages 101 and 102 deal with the employment of force in the case of concentration camps, 6-K. Pages 103 and 104 deal with Third Decree delegations, Statements of Evidence 6-L of the Trial Brief.

I shall now continue on Page 105, Paragraph D, which deals with crimes against humanity. That is Statement of Evidence VII of the English Trial Brief against the Gestapo and the SD.

THE PRESIDENT: Can you tell the Tribunal what according to your contention the SD did in the concentration camps?

DR. GAWLIK: The SD had nothing to do with concentration camps, My Lord. You have to differentiate between two facts, assignment to concentration camps by means of a protective custody order; that is, the protective custody order was always given by the Gestapo. The SD was not cognizant of that. And, secondly, the administration of concentration camps was out of the jurisdiction of the Economic and Administrative Central Department, Obergruppenfuehrer Pohl. This was an independent organization, which operated alongside the RSHA, so that if the Gestapo issued a protective custody order, then the detainee came under the jurisdiction of the Economic and Administrative Central Department; and the Economic and Administrative Central Department was directly under Himmler, just as was the RSHA.

THE PRESIDENT: So that you say that the RSHA and Pohl's organization and the Einsatz groups were all three entirely separate organizations under Himmler? Is that right?

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DR. GAWLIK: Yes, that's right.

THE PRESIDENT: Then what name was given to Pohl's organization?

DR. GAWLIK: Economic and Administrative Central or Chief Department.

THE PRESIDENT: Economic and what?

DR. GAWLIK: Economic and Administrative Leading or Chief Department. The order in the concentration camps, My Lord, was Himmler down to Pohl, and then to the Commandant of the concentration camps.

THE PRESIDENT: And do you say that the Economic and Administrative Chief Department employed no SS, or SD, or Gestapo, or Sipo?

DR. GAWLIK: SD men were working in the Economic and Administrative Department; let's say those men in the Department III, Amt III and Amt VI, were not. As far as I am informed, a few Gestapo men were there.

THE PRESIDENT: Didn't any men work with the SD on their arms in concentration camps?

DR. GAWLIK: That I cannot say for certain, My Lord, I can't say.

THE PRESIDENT: You will recollect that there was a good deal of evidence which indicates that SD men were working in concentration camps; and the Tribunal would like to know what your explanation of that evidence is.

DR. GAWLIK: I can only recollect, My Lord, that witness -- I think it was Witness Milch -- who testified on that subject here; but as far as I can remember the Commandant had been an SD man; but that must have been due to error, because the Departments III and VI of the RSHA had nothing to do with this affiar. It may be possible that the men in concentration camps belonged to the special formation of the SS, which was called SD; but I cannot answer that question with any certainty.

THE PRESIDENT: What was this special formation of the SS which was called SD?

DR. GAWLIK: They are all members of the RSHA of Amt VII, Departments of the RSHA, Department I, Department II, Department III, the SD Inland, Department IV, Gestapo, Department V, Central Police, Department VI, Intelligence Service, and Department VII. These members who were admitted to the SS were listed as members of the SS, who were members of the SS, or under the

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SS formation SD, so that the local unit of the SS weren't calling on them to do duty.

THE PRESIDENT: As far as I can understand what you say, you are saying that in the branch of the NSH., were SS called SD?

DR. GAWLIK: The members as far as they were members of the SS -- for instance, as Gestapo he was a member of the SS; then he belonged to the special formation of the SS called Special Formation SD.

THE PRESIDENT: Go on, Dr. Gawlik.

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DR. GAWLIK: May it please the Tribunal, I should like to say the following with reference to this subject: It is something which refers to the eastern territories. All members of the Security Police, even if they were not members of the SS, were wearing this SS uniform with the SD badge.

And now I come to Crimes against Humanity, Persecution of Jews. Statements of evidence VII of the English trial brief against Gestapo and SD.

The prosecution of individuals for crimes against humanity were unknown in international law until now. It was merely admitted that if a state violated any principle of humanity, other states had a right to intervention. As an example I mention the intervention of England, France and Russia against Turkey in 1827; against the Balkan States in 1878; and the intervention brought about by the atrocities committed in Armenia and Crete in 1891 to 1896. 1)

This right to intervention for crimes against humanity was not generally recognized. Oppenheim 2) for instance, considers an intervention to end religiou persecution and continued cruelty in war and peace in the interest of humanity, for doubtful. According to Oppenheim it should be a rule that interventions in the interests of humanity be admissible; they must, however, be of a collective nature. In accordance with the general fundamental rule of international law tha only the states are subject to interantional law, this intervention is directed only against the state in which crimes against humanity have been committed.

The charter introduces an entirely new element by decreeing the prosecution of individuals against humanity. That is probably why, according to paragraph 6-C of the charter, persecution for political, racial or religious reasons is not in itself a crime. It is moreover necessary, that this persecution was carri out in connection with the execution of a crime for which this Tribunal is competent. It is therefore not sufficient if the prosecution alleges, on page 53 of the trial brief againstthe Gestapo and SD, that it had been the task of the SD t keep the Gestapo informed about the Jews. Moreover, it is necessary to prove for what purpose this information was rendered.

The witnesses Wisliceny and Dr. Ehrlich have been examined before the Commis sion on the work of the SD in Jewish affairs. Wisliceny declared that AMT III of the RSHA had no department for Jewish questions. From 1936 until 1939 there was in the SD in the Central Department II/1 a Department for Jewish questions. 1)

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This department for Jewish questions allegedly did not have the purpose to prepare the extermination of the Jews. 2

Dr. Ehlich furthermore testified that in the Amt 111 as well no department concerned itself with the Jewish question, and especially not department 111-B 3) As a result of the regulation about the assignment of tasks to department 111 and Department 1V, it had been determined that all Jewish questions were only to be worked on by Amt 1V. 3)

I refer further to affidavit SD No.27, SD No.16, and SD No, 17. Schallenberg-SD No. 61, and Dittel -SD No. 63- have stated in regard to Amts V1 and V11 that these offices as well had nothing to do with the persecution of the Jews.

Furthermore, there are 259 collective statements available from former SD members for the entire area of the Reich, and for the time from 1933 until 1945 to the effect that the SD did not persecute the Jews.

THE PRESIDENT: Have any of these affidavits to which you are referring been translated?

DR. GAWLIK: No, My Lord. Only the summary affidavits have been translated.

THE PRESIDENT: Well, some of your affidavits have been translated, haven't they?

DR, GAWLIK: Some of them, My Lord, yes, but not those 259; they haven't been translated, My Lord. They are contained in my summary, SD No. 70.

I shall skip the following two paragraphs which deal with the events of the 10th of November, 1938, and I shall continue on Page 107.

The evidence has not shown that the SD offices 111 and V1 of the RSHA participated in the extermination of the millions of Jews. All Jewish affairs were dealt with by Office 1V, by Eichmann's section. Eichmann belonged to Office 1V and was the head of Section 1V B4. This is shown by the organizational plans of the RSHA of 1 January 1941 and 1 October 1942, Document L 185 and Document L 219 submitted by the Prosecution. The chain of command for the mass murder of Jews was Hitler, Himmler, Mueller (Office 1V) Eichmann. None of the witnesses has indicated that Offices 111,1V, and V11, or any of the local branch offices of these offices cooperated in the extermination of Jews. In this connection I refer to the testimony of Wisliceny, Page 751 of Record of Commission, German text, according to which there was no connection between the department of Eichmann and the offices 111,

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VI and VII, and further, to the record of Dr. K.H.Hoffmann, German text of Commission record. Hoffmann stated that Office IV was competent for deportations and that Eichmann was responsible for the solving of the Jewish question.

In the occupied territories also, all Jewish affairs were handled by Office IV, Department Eichmann. The initial IV J on Document PF-1210 , submitted by the prosecution shows that a department of Office IV dealt with the Jewish questions in France. This is confirmed by the testimony of the witness Knochen, Pages 475, 476, 1105, 1113 of the Commission record, German text, and by the Affidavit Laub SD No. 54. They show that Haupsturmfuehrer Dannecker, who was sent to France by Eichmann, also belonged to Office IV and received his instructions directly from Eichmann himself. Thus, no connection existed between Offices III and VI and Eichmann's department.

Referring to Denmark and Holland, the witness Dr. Hoffmann testified that the deportation of Jews from these countries was carried out solely by the Eichmann agency. On the 3rd of January 1946 Wisliceny made an extensive statemen on this subject before the Tribunal, saying that the deportation of Jews in the Balkan countries was also carried out by the Eichmann Department. The trial has in no way established that the SD offices III,VI or VII in any way supported the Eichmann agency.

THE PRESIDENT: One moment. Then that is another organization which is direct responsible to Himmler, is it, the Eichmann department? You gave us the RSHA, the Kohl organization, and another organization which I forget for the moment -- oh, the Einsatzgruppen; that was three organizations which were entirely outside the SS or the SD or the SA, and now you have got another one. This is the Eichma organization.

DR. GAWLIK: That isn't quite the legal position. It may be the same as reference to those three organizations I have mentioned because, after all, Eichmann was in Office IV, but probably it would be better if my colleague, Dr. Merkel, were to answer that question. I don't want to go ahead for my colleague Merkel who represents the Gestapo. Eichmann had an office in Department IV of the RSHA.

THE PRESIDENT : Go on.

DR. GAWLIK: It is true, however, that Eichmann and a number of other persons who have worked in his department in Office IV, were formerly employed in theSD .

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In this connection, Wisliceny has testified before the Tribunal that these persons were in part ordered to Offi lV, and in part transferred there. They received their orders exclusively fr Office lV. The witness Hoffmann has declared that Eichmann was transferred from the SD to the Gestapo, Record of th Commission hearing, Pages 1404 to 1458.

The fact that persons had worked in the SD before they worked in Eichmann's section is in no way sufficient to declare the SD a criminal organization. Thes persons were completely eliminated from the activity of the SD when they were taken over by Office lV or when they were ordered to Office lV.

The decisive question is whether the extermination of the Jews was one of the aims and duties of Offices lll, Vl, or Vll. The fact alone that these people resigned their activity in the SD and were taken over into Office lV indicates clearly that this activity was not among the aims and duties of the SD. Moreover, the majority of the members of Offices lll, Vl, and Vll did not know that individual persons who had formerly been employed in the SD w re now occupied i Office lV with the final solution of the Jewish question.

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I now come to the persecution of the churches -- statement of evidence VII-B of the English Trial brief against the Gestapo and SD.

The Prosecution has asserted in this connection that the Gestapo and the SD had been the main departments for the persecution of the churches: that the SD had pursued secret ends with deceptive maneuvers against the church; that the SD had collaborated with the Gestapo; that the SD had dealt with the opposition of the church against the Nazi State; that the persecution of the church had been one of the fundamental purposes of the SD.

I am of the opinion that these general allegations do not suffice to declare the SD as criminal for their persecution of the church. Paragraph 6-C of the Charter does not speak of persecution of the churches but of persecution for religious reasons.

The documents submitted by the prosecution which merely contain the general allegation that the churches had been persecuted therefore do not suffice. Moreover, it should have been shown that this persecution was carried out for religious reasons.

The concept "persecution" will moreover need to be explained. Not every measure can be understood as "persecution" which was undertaken against members of denominations by the State. Here, moreover, we have to start from the concept of human rights. The Charter does not define what is to be understood as violation of human rights from a religious viewpoint.

A number of writers upon International Law , for instance, Bluntschil, Martens, Bonfils, and others, take this to be the right for existence; the right for protection of honor, of life, of health, of liberty, of property and of religious freedom.

THE PRESIDENT: Is it your contention that Germany had the right, outside the territory of the Reich, to treat the church which existed there in any way they thought right ? Take, for instance, in Russia; in the Soviet Union. Is it your contention that there Germany could treat the Church and the Church property in any way they thought right, if that isn't in accordance with International Law ?

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DR. GAWLIK: You have to make a difference between conditions inside and conditionsoutside of Germany. Outside of Germany the general principles of International Law applied. My statements deal with conditions in Germany because the SD has been accused by the Prosecution, in Document 1815-PS, which is the document from Aachen, that it had persecuted the churches inside Germany. There you have to draw a distinct dividing line, and what I had been saying referred exclusively to conditions inside Germany.

Only a violation of this right from religious reasons will therefore fall under this penal code. The evidence on this point of the indictment has established the following :

The witness Roessner has testified that since the existence of Office III, no church questions, but only general questions of the religious life, have been dealt, with in such a manner that the religious tendencies, wishes and preoccupations of all sections of the population were affected without judging their confessional adherence in the sense of a persecution of the church, or causing or supporting police measures. The witness has stated that the SD carried on no sham proceedings in order to persecute the church. The witness Dr. Best, (witness for the Gestapo) has testified that any police intervention in individual church cases was the task of the Stapo. According to the statements of the witness Roessner the decree of the 12th of May, 1941, which ordered that Office IV should take over entirely all church affairs from Office III was but the formal confirmation of an already existing state of affairs.

For the period before 1939 I refer to the affidavits of Fromm and particularly to SD Number 55 of Theo Gahrmann. I draw your attention to the fact that the English Document Book H which deals with the persecution of the churches cntains no evidence against the SD. Documents D-75, 101, 145,848-PS, 1164-PS, 1481-PS, and 1521-PS are contained in this document book.

The following part of my presentation I have already covered, and it is in reference to the document submitted by the prosecution -- number 1815-PS.

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I believe to have shown that a collective sentencing of all members of Amts III and IV, which is the intention of the Prosecution, would not do justice to the tasks and activities of the Amts III and IV. If the Tribunal however, should pass sentence on the SD against my explanations, then the numbers of persons affected by this decision will have to be strictly limited especially because of Law No. 10. The general designation "SD" shoul not suffice because of the versatile meaning of this word. It will have to be clarified whether the decision affects :

1. Only members of Amts III and IV which were not founded until 1939, or also members of Central Department II/I and of the SD Main Office.

2. Only the full time members or also the honorary members.

3. From the honorary members only the collaborators, or also the Vertrauensmaenner (Persons entrusted with special tasks.)

4. From the Vertrauensmaenner only the constant employees, or also those who furnished occasional reports.

5. From Amt VI also those members of the military Abwehr (Intelligenc.

6. Also technicians, secretaries, drivers, telephone operators, etc.

Mr. President, High Tribunal, your decision will be a milestone in the history of law, but also be a milestone in the history of humanity.

The striving of the people is peace. The decisive politicians, as well as representatives of legal science agree that this wish of humanity can only be fulfilled by an independent jurisduction unbounded by State sovereignty.

James Brown Scott, the President of the American Institute for International Law, established in a speech held in the year 1926 that the history of mankind is but the history of the individual upon a larger scale, In the history of the individual the right to take justice into your own hands has given way to an arbitration by the parties concerned, and from thence developed the juridical proceeding of nominating judges and executing the judgment.

Violence is violence; whether between armed men or entire people, which in the case of war put their last resources at the disposal of their governments.

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Today, the people, in their development, as compared with the development of the individual, are in a transit state from the arbitration system to a regular juridical system. Nature repeats herself from day to day, from generation to generation, whether in individuals or in such groups of individuals which we call State or Nation. The International Arbitration System will be the basis for the regular juridical system of the United Nations, which is unbounded by state sovereignty, just as the regular juridical system has developed out of the arbitration system, within the peoples.

We are at the dawn of this era in the history of peoples, an era which is the end of belligerent struggl and would thus fulfill the deep wish of all the peoples. The Internat nal Military Tribunal could fulfill this task in the World History.

THE PRESIDENT: Dr. Gawlik, I have before me the Russian translation of your speech, and on page 113 of the speech it apparently refers, in paragraph which has got a number 1, to the chief department of the SD. I would like to know for the benefit of the Tribunal, what you mean by the Chief Department of the SD. Do your pages correspond ?

DR. GAWLIK: Yes, My Lord. The SD Main Department until 1939 had the following departments. It had Department II-L -- that was Department E. When the RSHA was founded, that department was transferred to the Gestapo.

THE PRESIDENT: The Main Department of the SD was transferred to the Gestapo . . .

DR, GAWLIK: No, not the entire Main Department, my Lord. Until 1939 there was a main department SD. After September 1939 the RSHA was in existence and the RSHA only existed since September 1939. Before that there was the main SD department, various sub-departments, and one department of that SD main office was transferred to the Gestapo when the RSHA was founded. That department was called II-I.

THE PRESIDENT: Did the main department of the SD cease to exist in September 1939.

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DR. GAWLIK: Yes, then it ceased to exist. And department II-2 then became Amt III of the RSHA.

THE PRESIDENT: You are saying, are you not, that Department II-I, which was a branch of the main department of the SD was transferred to the RSHA and became department II in the RSHA or Amt II in the RSHA?

DR. GAWLIK: No, no, My Lord, Amt II-I came into Department IV of the RSHA. That is the Gestapo and . . .

THE PRESIDENT: Yes, I see.

DR. GAWLIK: And department II-2 turned into Amt III of the RSHA.

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THE PRESIDENT: At any rate, the SD Main Department ceased to exist, and all passed into the various Amts of the RSHA?

DR. GAWLIK: In September of 1939, yes.

THE PRESIDENT: Yes.

DR. GAWLIK: Yes, that is right.

We are at the dawn of a new era in the history of peoples, an era which is the end of belligerent struggles, and which would fulfil the deep wish of all the peoples. The International Military Tribunal could fulfil this task in the history of the world if by its decision it were to indicate that the Tribunal stands above the people.

I believe that the condemnation of the guilty indirectly, through the organizations, is not the right way, because this would punish the innocent. But this goal can only be reached if the judgment of this Tribunal is based on the principle that there must be no punishment without the establishment of the guilt of the individual.

THE PRESIDENT: I don't know that the Tribunal has laid down any exact order, and I am not sure how far the translations of the various speeches have now gone, but perhaps counsel for the organizations know how far their speeches have been translated and then more which it is most convenient to take now.

Is it you, Dr. Laternser?

DR. LATERNSER: Yes, sir.

THE PRESIDENT: We will take the High Command now, then.

DR. LATERNSER: Mr. President, so far as I know, the English translation of my final plea is completed. The French translation, apparently, is mostly completed, because I have just seen one copy of it here. The Russian translation -- I don't know about that.

THE PRESIDENT: Very well.

Yes, Dr. Laternser.

DR. LATERNSER (Counsel for General Staff and High Command): My Lord, Gentlemen of the Tribunal.

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It has happened more than once in the history of nations that, after a war, the military leaders of the defeated party were brought to trial.

If the defeated war leaders or generals could not be reproached with ineptitude or negligence of their military duties, they were suspected of treason, of pursuing political aims, or they were accused of disregarding the rules of warfare or the limitations of their military powers.

There is one feature, however, which must be noted: As a rule, trials were conducted and verdicts rendered by their own state, and not by the enemy victors. To find an example for the latter case, one must go back into history by more than 2,000 years. The Romans strangled their enemy Jugurtha in jail and persecuted Hannibal with their vengeance until they were able to force the cup of poison into his hands at the court of his host. In the more recent history, there is the sole example of Napoleon I, who was banned by the victorious powers to St. Helena, where he died; but he was not taken to account by the victors because he had served his country as a French general, but because he was the emperor of the French, and consequently the political head of his country.

Hitler, who was both the head of the German Reich, and the Supreme Commander of the Armed Forces, has eluded judicial responsibility by his death. As he can no longer be dealt with, the Prosecution have taken the highest military commanders instead of the Supreme Commander and head of the State, made them summarily also political leaders, and attempt in this way to render them responsible.

This method is indeed unique and without precedent in the history of nations, and may well be contemplated with peculiar feelings by allsoldiers of the world.

If one thing stands out clearly from the collection of evidence -- and I shall have to deal with this in detail later on -- it is the fact that the German military leaders did not dominate their country, and did not drive it into the war, that they were not politicians, but exclusively, and perhaps even too exclusively, soldiers, which introduces the element of tragedy.

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Had they been politicians, Germany would not have fallen into this abyss. If we keep this clearly in our minds, it is obvious that these men are facing their trial before this Court in truth only, because they served their country as soldiers.

If the Prosecutor, General Taylor, argues that Hitler could not have waged his wars without the assistance of the Armed Forces, that argument cannot be invalidated. Nobody has even been able to wage a war without soldiers. The position of the German military leaders, however, as well as that of all soldiers, is well defined by Carlyle when he says:

"If a man becomes a soldier, his soul and his body thereby become the property of his commanding officer

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He is not allowed to decide for himself whether the cause for which he fights is good or bad. His enemies are selected for him, and not by him. It is his duty to obey and to ask no questions."

If the German military leaders are today indicted before this Court as an allegedly "Criminal Organization", this indictment does not only apply to them, but is also in fact directed -- however strongly it may be desired to deny this publicly -- to the soldiers in general, or at least to the military leaders as a class.

By indicting the military leader, who has obeyed the orders of his Government and fulfilled his military duties, because the Prosecution declares the action of his Government to be illegal and represents him as a partner to such action of the Government, the Prosecution places upon him the obligation to examine the legality of his country's policy, and raises him to the position of a judge called upon to give a verdict on the policy of his State. It cannot be my task to present the consequences which such a mental revolution must have for the soldiers of the world. I can only ask the Tribunal to consider with particular care and in the consciousness of its peculiar responsibility, these special circumstances, when it applies the principles of the Charter to the special position which the soldier ocuupied both in fact and in law. Whenever a noble Judge, after careful self examination, comes to the conclusion that all sorts of reasons might tempt him to be prejudiced against a defendant, he will feel an obligation to weigh the evidence with special care, and to ask himself again and again whether he is guided by a genuine appreciation of the facts, or rather by a sentimental attitude.

Now in this case, where one party is being tried in court by the other the Prosecution calls this modestly lack of beauty -- where the judges are exclusively from nations against whom the defendants fought as soldiers, in this case, I say, the judge is required to do something that is humanly almost impossible, namely to free himself, in the interests of the future of mankind, from the feelings engendered by the struggle which has just come to an end, and by the passions which were whipped up in its course.

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I conduct the Defense with the full confidence that, as regards the German military leaders whom I represent, this Tribunal will not exercies retaliation, but will render justice in truth and in the highest meaning of the term.

The whole indictment is based on the attempt to collect 129 high ranking officers of the German Armed Forces, who occupied certain service positions in the military hierarchy, under the double designation "General Staff and OKW" in a "group" both in law and in fact.

Before dealing with the legal aspects of the alleged "group character" I must present some observations on the term "General Staff" and "High Command" (OKW).

There never existed during Hitler's time a general staff for the whole armed forces, as the Prosecution obviously seems to think along the lines of the "Great General Staff" of the former Imperial Army/

The Navy neither had an Admiral's Staff nor Admiral's Staff officers. nor was the "Naval War Staff"set up in 1938 anything similar to a General Staff. The Navy only participated in the functions of the Army, and of the Armed Forces in general, to the extent to which operational cooperation was required in individual cases. The Air Force had a general staff of its own consisting of the chief of the general staff and the general staff officers. Its functions, however, were sharply distinguished from those of the general staff of the Army and were limited to the Air Forces own sphere of activity. Cooperation between the two existed only in the case of joint operations.

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Nor was the General Staff of the Army itself, as the Prosecution seems to think, a central agency, but it consisted likewise merely of the chief of the general staff and of the general staff officers.

How little the position of this general staff corresponds to the picture drawn by the Prosecution results from the fact that its first chief of the general staff, Col. General Beck, was only received twice by Hitler during the whole term of office from 1935 to 1938.

The "General Staffs" of the Army and of the Air Force, which actually existed, are not in the least concerned with the indictment on the grounds that the indicted 129 officers do not represent these General Staffs as an entity; out of the whole group, the sole members of these general staffs were Col. General Jodl, as chief of the operations staff (Wehrmachtfuehrungsstab), the Deputy Chief of this staff, and the chiefs of the General Staffs of the Army and the Air Force. All other generals were not general staff officers, but troop commanders, a great many of them, namely, 49 out of the 129 officers, were not even members of the General Staff at an earlier date. If the Prosecut on nevertheless give this group of persons the name of "General Staff", then this amounts to the same thing as if the Roman Catholic Church indicted the Order of the Jesuits but really wanted to attain the Cardinals.

The term "General Staff", therefore, does not cover the 129 indicted officers, but all the General Staff officers who are not in the least concerned with the indictment. It is misleading and arbitrary. A verdict might be based on the designation "General Staff" but it would be directed against an institution, the members of which are not indicted.

The "High Command" had even less the importance of an independent and central leading agency. The proceedings before this Court have clearly shown that it was only Hitler's military operation staff, and that it had no independent powers of its own to give orders. Only four out of the 129 persons ever belonged to the High Command. None of the others are covered by this designation.

The double designat on "General Staff" and High Command" does not improve matters either. What is called "General Staff and "High Command actually

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represents the whole of the officers who occupied the highest service posts in the course of this war. They were nothing but the heads of the military hierarchy, sharply divided among themselves according to the three service branches. The only link between these high ranking officers was their relation within the military hierarchy, their common professional ethics, and the spirit of comradeship, just as it is the case in all armies. The term "General Staff" and "High Command" is therefore an accumulation of wrong designations -- ar bitrarily selected in order to pretend that there existed a combination of something that was never combined and was not capable either of being combined. As regards the 129 officers, neither the name "General Staff" nor the designation "High Command", nor the combination of these two designations, "General Staff" and "High Command", produces a definition covering the functions and all the persons concerned.

The erroneous designation in itself might perhaps be no obstacle to a condemnation if it could be replaced with a more correct name. The term "Military Leaders" or the designation "Holders of the Highest Ranks in the German Armed Forces" would substantially cover the totality of the indicted officers more adquately than the erroneous term "General Staff" and "High Command." But both designations would only be a loose definition and constitute a clear indication of the fact that there existed a multiplicity of persons, but could never be considered as a proof of the existence of any kind of combination of these persons.

Although these wrong designations and the impossibility to find a correct term constitute in themselves already strong arguments against the assumption of a "Group Organizatinn", it is still necessary to deal with the legal conditions which must be fulfilled in order to be able to consider the indicted 129 officers at all as a "group" or "organization," although it might be nameless.

As the Charter does not define the terms "group" and "Organization", it is necessary for me to say a word or two on the definition of these terms.

In the first place, there is the question as to whether the term "group" is something different than the term "organization."

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Or whether both terms are identical. As the Charter uses both terms side by side, even in the same sentence it must be assumed that these two designations were deliberately chosen in order to emphasize at least a difference in fact.

Article Nine of the Charter, however, gives rise to justified doubts as to whether it was actually intended to characterize two different phenomena, because under this Article the Tribunal is only authorized to declare the groups and organizations to be "criminal organizations". Therefore, the Tribunal cannot declare a "group" to be a "criminal organization" if it does not possess the corresponding characteristics, that is to say, if it is not itself also an organization. In this case, the quality of group would be irrelevant. As far as Article Nine is concerned, an unorganized group could not be declared to be criminal.

Nevertheless, the question of the "formation of a group" must be re-examined.

As regards the definition, it must be based according to the American chief prosecutor on the natural usage of the language. That means:

> The main characteristic of the existence of a "group" of people is the local coexistence of a multiplicity of persons. One speaks of a "group picture" if several persons are shown side by side, of a group of "curious on-lookers" if a number of people are watching side by side the same event. From this it follows that the condition which must be fulfilled to constitute a group is also the simultaneous coexistence of persons. As these two characteristics are lacking in the case of the group of high ranking generals and admirals, as defined by the Prosecution -- these officers who belong to the most different agencies were never, neither before nor during the war, locally collected nor simultaneously and jointly active -- there can be no question of a group neither in the linguistic nor in the factual meaning of the word.

If this circle of officers cannot be considered as a "group" because the necessary conditions for the formation of the "group" are lacking, the question remains as to whether it was a "group similar to an organization" or even an

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organization. If we take the natural usage of the language again as our starting point, we find that the main characteristic of an organization is the fact of "its being organized". But a combination of people is"only organized" if it possesses organs of its own, acting on behalf of the organization, while its creation, its powers and its activities are based on some sort of a constitution. Furthermore this association -- irrespective of whether it be founded in law or may only have an existence based on sociological fact -- must be able to develop through its own organs a will of its own. An organized association must be as the Prosecutor himself admits, an entity. It is true that this entity need not find expression in so concrete a form that it appears as a special subject in law but it must at least outwardly show the characteristics just mentioned, and must constitute as to its substance a deliberately created voluntary association of several persons for the pursuit of common purposes.

The main characteristic of an "organization" according to this definition is the "inner purpose" of the association. The external form is not alone decisive for its existence. On the contrary, an associated multiplicity of persons does not become an "organization", unless its inner purpose is that of the pursuit of common aims.

As regards the circle of officers concerned, the conditions are completely lacking both in law and in fact which might justify the assumption that they constitute a group similar to an organization, or an organization. Even the most important condition, namely that of voluntary membership,is not fulfilled.

These officers did not occupy their service positions voluntarily, nor did they remain in these position voluntarily. But that the condition of voluntary memberships must be fulfilled has already been indicated by the Tribunal in its definition of the points of proof considered relevant, and also the Prosecution have called these conditions essential. It is true that the military leaders voluntarily selected the military profession. They did join the Reichswehr voluntarily in 1920. And in so doing, had to comit themselves for 25 years under a contract. However, they were promoted to the posts

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which come under the indictment exclusively by reason of their ability, and without any initiative of their own. By virtue of the commitment entered into, they could not ask to be retired as long as they were capable of carrying out their duties, certainly not during the war when resignation was explicitly prohibited to them. These events and facts require no proof, as they are the same or similar to all the armies in the world. They are based upon the military power to give orders on the one hand, and the military obligation to obey on the other.

Thus it is proved that the General Staff and High Command do not in any way constitute an association of persons based upon voluntary membership.

But it cannot be assumed either that we are here concerned with an organization because the further condition, namely, the consciousness of these officers that they had joined an association at the moment of their appointment was lacking.

Any citizen who voluntarily joins an organization knows, at least, that this organization exists, and that he is joining it.

But these officers were not asked to agree when they were commissioned into the posts which are only now to be grouped together by the Prosecution by the arbitrary process of representing them as a "group" or "organization." How could they, in these circumstances, have been aware at the time of their appointment to the various service positions that this appointment was equivalent to acquiring membership in a kind of association. The argument of the Prosecution that an an earlier date a similar association of General Staff officers existed in what was called the "Schlieffen Society" is irrelevant in connection with the appreciation of the legal aspect with which we are here concerned. The Schlieffen Society, which only met once a year for a lecture and a report, was exclusively concerned with cultivating the spirit of comradeship between the former General Staff officers and those on active service.

There was not the slightest reason for the German and Austrian officers on active service, who originated from the three service branches, to set up a similar association during the war. The foundation of a political community

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was even more out of the question in view of the traditionally unpolitical attitude of the whole German Officer Corps. The idea that a criminal purpose might have caused an association, as the Prosecution would like us to believe, is quite absurd.

If, therefore, these officers neither took up their posts voluntarily nor had the consciousness of joining an association, or of getting together in an organization, the s le fact that they occupied the posts covered by the indictment cannot, in itself, be quoted as a proof that we are concerned with an "organization."

There are also the following facts which may be mentioned as opposed to a deliberate association and the existence of an organization.

-- large number of the officers concerned had never met personally at all. Only some of these officers have ever had contact with each other in connection with their official duties.

Every inner homogeneity was lacking in this circle of high ranking officers who are alleged to be so unanimous in their opinions. This trial has more than anything else before brought out very clearly the profound divergencies and inner oppositions existing among these high ranking military leaders.

THE PRESIDENT: We will break off there for recess.

(A recess was taken until 1400 hours)

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ERRATA SHEET

AFTERNOON SESSION, 23 AUGUST 1946

All page numbers should be followed by the letter "A".

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AFTERNOON SESSION

(The hearing reconvened at 1425, 27 August 1946).

DR. LATERNSER: The most glaring expression of the absurdity of this "group experiment", however, is given by the insertion of Himmler into the circle of these Army officers. It is a well-known fact that Himmler was the deadly enemy of the Army, and that the leaders of the Armed forces and those of the Waffen SS had no associations with each other except those conditioned by purely military operations at the front line. It is just the inclusion of Hitler and of some of the leaders of the Waffen SS which constitute a convincing proof against the existence of this really impossible institution.

Nor does the time element admit of the assumption that we are concerned with an "organizaton." The military leaders were not simultaneously in their service posts, but often reached them in so widely separated periods, that only a fraction of them might have simultaneously held the quality of membership. This is shown most clearly by the chart submitted to the Tribunal. According to these charts, only seven generals in 1938, only twenty-two generals on the first of November, 1939, only thirty-one generals on the 22 of June, 1941, and only fifty-one generals in November, 1944, that is to say, by far not even half of the indicted officers were in the positions covered by the indictment.

There existed no uniform will on the part of the whole of these 129 officers. Every one of them, it is true, was subjected to one single will above his own but only in a military respect, and not as regards an existing association in the manner of an organization. How could these officers, at any time, have been able to appoint organs of their own for the expression of their will? The constant change in the service posts concerned would have excluded any such possibility. Only nine generals and admirals occupied service positions for the whole duration of the war, which would enable them to be included among the so-called "group". On February 4, 1938, only six generals held such service posts. Twenty-one generals held service posts coming under the so-called "group" only for periods of from two to two and a half years. Sixty-one officers are counted as belonging to the group, although they did not hold the corresponding service posts even for a year.

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Just as the organs of a group are lacking, so a constitution or a statute was absent which would have regulated the acquisition of membership in, or the resignation from, the group, its powers and the activity of its organs their election or appointment. There existed not a single written or oral provision or clause dealing with any kind of community. The Prosecution were, therefore, unable to submit even one single document, proving the existence of a "group" or an "organization."

The affidavits submitted to the Tribunal by the Prosecution, which were to prove on the strength of the statements made by Generals von Brauchitsch, Halder and Blaskowitz that a "group" did exist, have proved to be quite unsuitable for this purpose as a consequence of the rectifications which were subsequently made. The hearings of Field Marshal von Brauchitsch before this Court, and of Col. Gen. Halder before the Commission, have shown that the identical affidavits of both generals constituted a condensed version of several interviews, drawn up by the interrogating officer and submitted to them for signature, and that those written statements were unintelligible in all the points which are of decisive importance in this question, without the additional explanations given by the witnesses at the moment when they signed these statements. Consequently, the interpretation given to these statements by the Prosecution is wrong. The corrections which have now been made have now been refuted, have thus deprived the Prosecution of its main argument, and of every proof in favor of a "group" formation.

The same applies to the affidavits of Col. Gen. Blaskowitz, which was submitted to the Tribunal in the course of these proceedings. They have also been rectified and completed by affidavit No. 55. Thus, the conclusions drawn by the Prosecution have also in this case proved to be wrong. Nor has a joint action of the organization which might be considered as the expression of the latter's collective will been proved in any of the cases under consideration. It is, by the way, quite impossible to give such proof as this circle of officers had neither by law nor by nature the capacity to negotiate, and could, therefore, not have exercised any joint action as an organization.

Nor did these officers hold any meetings from which the existence of any

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kind of an organization might be inferred. The Prosecution are quite wrong when they believe that they can use the military discussions with Hitler, and additional meetings of Field Commanders, as a proof of their theory.

Whenever meetings of the Supreme Commander of the Army were held with the Commanders-in-Chief of the Army groups, or Armies, as was the case in several instances, this was always done for purely military purposes, and the discussions were exclusively concerned with military questions. The work of the Commanders-in-Chief on widely dispersed theaters of operations and their permanent and complete absorption by their military duties, made it impossible from the very outset that they should meet for reasons other than purely military ones. For the same reason, not even the highest military commanders maintained close contact, be it only for the reason that the often mentioned Fuehrer order No. 1 limited the knowledge of each and every one of these Commanders-in-Chief to his own sphere, whatever his position might be. As the three service branches, apart from their operational cooperation in individual cases, existed side by side in complete independence, joint discussions of the Commanders from the various service branches were held for this reason only on some rare occasions.

If the Prosecution have referred to an affidavit by Col. Gen. Blaskowitz in order to prove the contrary, the latter's supplementary Affidavit No. 55 has shown that he was misunderstood also on this point.

There have never been frequent meetings of the high ranking generals in the meaning of the Prosecution. The Prosecution have wrongly interpreted events resulting from the purely military execution of certain tasks.

The well-known meetings with Hitler can be used even less as a proof of the existence of an institution similar to an organization, as they were held -- and this was repeatedly explained in the course of these proceedings - merely in order to allow the participants to listen to a speech by Hitler, and to receive his orders subsequently. Looked at from the point of view of the Commanders, these meetings, therefore, had a purely military character.

I may, therefore, sum up the position as follows:

1. The 129 officers concerned merely represent a multiplicity of persons in fact, who neither in law nor in fact, possessed the capacity to negotiate, and therefore, cannot be the object of a special legal or even penal appreciation.

2. The designation of "General Staff" and "High Command" is erroneous and wrong.

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3. The circle of officers concerned was neither a "group" nor an "organization" nor an institution similar to an organization.

4. Membership, which is clearly defined in any organization, had in this case to be the subject of long drawn out explanations.

5. None of the officers has ever formally joined an organization, nor have they ever been conscious of having joined an organization or of having been members of it. Most of the so-called "members" did not even know each other personally, their attitude to the ruling regime was widely divergent.

6. There has never been an acting "organ of association", never a "constitution" or a "charter." There has never been a "will of the association" in evidence, nor has any "action of association" been recognizable.

7. The officers concerned, whose names and number we know exactly, can therefore be rendered responsible only as individuals, and only in respect of crimes which they have personally committed. They were never grouped together collectively, and therefore, they cannot now be grouped together collectively, merely in order to facilitate their punishment.

In ancient history -- after the battle of Aigospotamoi -- generals were once to be condemned by a collective verdict on account of a kind of crime against humanity. They had failed to bury their dead.

Thereupon, Socrates rose in court, refuted this ideain a passionate speech, and demanded that the Tribunal should safeguard the principle which was the absolutely indispensable condition of any just verdict, namely; That every military leader could only be indicted as an individual, and sentenced only in accordance with the measure of his personal guilt.

In those days, Socrates enforced his opinion. The Tribunal maintained the principle in spite of the opposition of public opinion, and refused to render a collective verdict.

Should our modern period throw easily overboard something which has been looked upon as a fundamental principle of law for the last 2,000 years?

I believe that a collective indictment and a collective condemnation are impossible, be it only for the reasons which I have just presented. The Tribunal will have toreject the motion to declare the so-called "General

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Staff" and "High Command" group as a criminal organization.

But if one follows the theory of the Prosecution further -- without associating oneself with it -- the "criminality" of the whole of the 129 officers would have to be examined. That means it must be ascertained whether this group as a whole has committed crimes in the meaning of Article Six of the Charter. My answer to this question is in the negative.

The accusation leveled by the Prosecution at the Military Leaders, to have at any time combined with the Nazi party for a common plan, having as its object wars of aggression, war crimes, and crimes against humanity, presupposes that such a general plan existed, that it was known as a common plan, and finally, that the military leaders, as a whole, had made this plan their own.

The Prosecution have raised these reproaches against the indicted group of persons as a whole. But I think I have already proved that there existed no such "organization" or "group" as an acting entity of these persons. The Prosecution goes around this unavoidable difficulty by asserting that,

1. The character and the action of the five military chief defendants are characteristic of the whole of the 129 officers, and

2. That, moreover, there is no doubt as to the criminal character of the whole group of these officers.

If the American Chief Prosecutor explained in his speech that the human actions which are the subject of this trial have been considered as crimes ever since the time of Cain, I reply with the sentence that since the days of Cain, it has been claimed that the just shall not be destroyed together with the unjust in the expiation of crimes. The requirement of individual expiation of crimes committed is among the oldest elements of European morals.

I think it should not be too difficult for the four great victorious nations in practice to reach a similar decision in 107 individual trials on the individual guilt or innocence of these 107 living men, as it is being done in the trial against the five military chief defendants. Where is the inner justification of and the legal necessity for, a collective trial against these men? The innocent individual is only too easily destroyed by a preconceived collective verdict.

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The opinion expressed by the Prosecution that the ideas and actions of the five main defendants are not "with absolute certainty" typical also for the other members of the so-called "group" and thus simultaneously of the criminal character of the "group"itself, is contradicted by actual circumstance The membership in the"group" is subordinated exclusively to the holding of certain service posts. Typical in respect of the "group"is, therefore, only holder of the typical service post. As 95% of the officers concerned were Commanders-in-Chief of Armies or Army groups, the holders of these posts might possibly be considered as typical for the "group" as such, but this can on no condition be said of the five main defendants, not a single one of whomever held such a post.

On the other hand, the five main defendants are insofar directly untypical as their service posts do not reappear in the case of any other members of the "group." There is no second chief of the High Command or Chief of the Operations Staff in it, nor is there a second Commander-in-Chief of the Navy, and there is certainly not a second Reich marshal. As the main defendants occupy a higher level in the military hierarchy as the typical military leaders, their position is different in respect of the decisive points If one or the other of themain defendants may perhaps have had a theoretical possibility to influence the military resolutions of the Supreme Leadership, the typical member of the group did not even have this theoretical possibility. If the main defendants, at least in their own sphere, knew relationships and backgrounds of orders given, or could obtain such knowledge, this was impossible to the typical member of the group. If in the case of the main defendants, contact with policy was unavoidable because they were at the highest levels, even this possibility was completely absent in the case of the Field Commanders The short observation strikingly shows the arbitrary character of the indictment, pressing together heterogeneous elements, and extending without further ado to the whole of the heterogeneous elements reproaches which the Prosecution rightly or wrongly believe they can put forward against the main defendants.

I cannot follow the Prosecution in this direction, and in my observations, I shall, therefore, not deal with the untypical main defendants, but only with those members who can be considered as typical

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of the overwhelming majority of the "group" only the attitude which these members adopted towards the alleged plans of the Nazis, only their knowledge of these plans and only the extent to which they cooperated in their execution could be used at all, in the meaning of the Prosecution, to build up a charge against the "group".

As Htiler is dead, the Prosecution leave his person in the back-ground, and look for other responsible parties. But nobody can deny that Hitler alone held the power of the Reich in his hands, and consequently, also held the sole and total responsibility. The essence of every dictatorship ultimately lies in the fact that one man's will is almighty, that his will is decisive in all matters. In no other dictatorship was this principle developed so exclusively as in Hitler's dictatorship. If all military men and all politicians keep repeating this again and again, it is impossible to suspect each and every one of them of lack of courage to stand by his conviction, but it must have been a fact! The dictator exercised the power given to him with an almost demon-like strength of will. Besides him, there was no other will, no other plan, no other conspiracy! As regards the soldiers, it was particularly significant that Hitler had been called upon to assume power by Reich President von Hindenburg, and had then been made unlimited head of State by Reich law and public plebescite. The perfectly legal and formally correct transfer of legislative power, and of the power to give orders, produced the result that also the soldiers submitted to Hitler's personality. Furthermore, he knew how to play off one against the other, but in his decisive resolutions, he had neither advisers nor did he allow independent planning.

Hitler's person is truly comparable with that of Lucifer: Just as Lucifer starts out on his radiant course of light with tremendous speed and immense momentum, gains the supreme summit and the falls down into the deepest darkness, so Hitler followed a similar course. Who ever heard that a Lucifer needed assistance, advisors, or helpers in his lightening ascension? Does he not rather, by the force of his personality carry with him to the heights all the others, and then pulls them down into the depths with the same force?

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Is it imaginable that a man of this kind should have engaged in a long term preparation of a plan, surrounded himself with a circle of conspirators, and sought their advice and assistance for his rise?

It is not the intention of this picture to elude responsibility: Every German general is enough of a man to stand up for his actions, but if justice is to be found, the actual circumstances, as they really were, must be recognized, and serve as a basis for the finding of justice. The best proof, however, against the participation of the generals in Hitler's plans, is given by Hitler himself when he says: "I do not expect my generals to understand my orders. I expect the generals to follow them".

Just as at the end of the first World War, the General Staff, it is now the military leaders as such -- again grouped together under the misleading collective term "General Staff" -- who have the misfortune that the German officer is under the prejudice that he is possessed not by a soldierly but by a "militaristic" mentality. Literature and the press of the world declare with many voices that the German officer does not exercise his soldier's profession only as a duty, but that to him war -- as the center of all his planning and scheming -- constitutes the highest value of all personal and national life. The American Chief Prosecutor defines this idea by saying that

"the war is a noble and necessary occupation for all Germans".

From such glorification of war, the mentality of the German Officer Corps had been directed for generations, so it is asserted, exclusively to aggression, conquest, domination, and violation of other nations. It may sometimes be difficult to refute prejudices, -- but to prove this slogan to be unfounded nonsense is rather easy: The attitude and the mentality, which find its characteristic expression in the General Staff, are known to have been created by men like Frederick the Great, Scharnhorst, Moltke, Schlieffen and Seeckt. If we search the life and the writings of these men for evidence of a militaristic spirit, the result is distinctly negative. Hardly ever did a monarch meet with such an enthusiastic praise as Frederick the Great found in the works of the Englishman, Thomas Carlyle and the American George Bancroft,

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who says in his "History of the United States" that Frederick the Great did n contribute less to the freedom of the world than Washington and Pitt. Helmut von Moltke, who formed the personality of the German General Staff officer like nobody else before and after him, expressly calls war the last means of safeguarding the existence, the independence and the honor of a state." He, furthermore, declared: "It is to be hoped that this last means will be appli ever more seldomly with our progressing culture. Who would wish to deny that every war, even a victorious one, constitutes a misfortune for one's own nation, because no territorial aggrandisement, no war contirbution amounting to billions, can replace the loss of life and offset the grief of mourning families."

Von Moltke's most famous successor, Count Schlieffen, was the author of the often misinterpreted slogan: "To be more than to appear" which requir of every General Staff officer modesty, quiet work, and absolute renunciation of personal distinction in public.

Is it possible to express more strikingly in a few words the fundamenta difference existing between this mentality and that of the National Socialist

When in 1914 the German General Staff started on its crucial test, the younger Moltke, who was at its head, was a man of resignation, who as an Anthroposophis was even further removed from militaristic conceptions than al his predecessors: As regards, finally, Col. General von Seeckt, the creator the Reichswehr, his principles as laid down in his programmatic essay on the subject "Statesman and General" published in 1929, are such that this essay could, without essential alterations, be immediately included in any handbook for British, American or French officers.

To conclude this survey, I may be allowed to quote from the memoirs of Field Marshal von Mackensen, who was a man who must be considered, together with Hindenburg, as the chief representative of William II's Officer Corps. On the day when he gave the orders for the great break-through in the battle of Gorlice -- it was the 28th of April, 1915 -- he wrote down the following lines:

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"Today my expectations center around a murderous battle.....
It is expected of me that I should win a great success, but decisive and great successes in war are mostly achieved at the cost of considerable losses. How many death sentences does my order of attack involve? It is this idea that wieghs heavily on me whenever I give an order, but I am myself acting under order, driven by unavoidable necessity. How many of the strong and healthy boys who marched past me yesterday and today on their way to the front line, will lie on the battle field within a few days ready for the last rest .....
Many of the radiant pair of eyes into which I was able to look will soon be closed forever.....
That is the reverse side of a military leader's job".

These, therefore, are the facts: How little have the leading men among the German generals been formed in accordance with the picture drawn of them by an envious, biased or uninformed propaganda in the world. To make this for once quite clear, is, I think, a duty which I have to fulfill in this unique trial of historic importance;

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Has the German Officer Corps, and in particular, have the German generals changed since 1933? Have they, under Hitler, become disloyal to their teacher and drifted into a "militaristic" back water? Has the spirit of a Moltke, of a Schlieffen, of a Seeckt become extinct in them? Have the generals turned to a criminal Nazi plan and taken an active part in it? I believe that the facts speak a language of sufficient clarity.

The "common plan", the "conspiracy", with the object of an extension of power which was finally to lead to aggressive war, was at first and primarily, as the Prosecution emphasized again and again, aimed at the subjugation of their own nation, at the extermination of all elements of opposition in their own people. In this process, so the Prosecution alleges, the foundations and experiences required for the planned subjugation and extermination of other nations were to be gained.

Such an all-comprehensive plan, however, would have been conditioned in all circumstances by an inner agreement of the military leaders with these alleged objectives and principles.

What were the facts? Relations between the Officer Corps and the Party were anything but good. When the Party was entrusted with the leadership in all spheres of public life, as well as in the creation of a totalitarian control of trade and industry, the Officer Corps had been given no opportunity to express an opinion. The Officer Corps participated in no political decision. Excesses of high party officials, terrorist methods of the Party, action against the Jews, the political education of the young generation, and the anti-Church attitude adopted by the Party under the leadership of Hitler and Bormann were sharply rejected. The attempt of the SA to take the place of the Armed Forces, and that of the SS to constitute a second Armed Force besides the Wehrmacht, met with the strongest opposition.

So this is what the typical attitude of the military leaders really looked like! Where, then, was the ideological foundation which alone would have rendered common planning possible? Hitler's personality excluded every plan and every conspiracy below, besides, or with him. As regards the military leaders, there was no room, neither under the Constitution, nor in fact, for the pursuit and representation of political aims or political plans. Beyond

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that, warnings arose from among the indicted officers against the policy pursued since 1935, which later on proved to be a "va banque" policy. The Chief of the General Staff risked his post and his person to call a halt to the fateful doings of a head of State, resolved to go to extremes. From among the same quarters, a coup d'etat was finally attempted right in the middle of the war. Is there anyone who can still seriously assert that the mentality of these men, their planning and their scheming, was directed only to war and to nothing but war, and to the assistance of a policy, having a war of aggression as its purpose? I believe to ask this question means at the same time to reply in the negative. If the Chief of the American General Staff, General Marshall whose sources of information were no doubt excellent, gives even in his reports to the American president, expression to his conviction that there existed no common plan between the General Staff and the Party, but that much oftener sharp differences had appeared between the two, this is certainly an important and conclusive testimony to which I have nothing to add.

I am now coming to the section of the indictment according to which the military leaders, as a whole, are said to have deliberately, consciously and treacherously committed the crime of planning and executing a war of aggression.

The profound legal objections to characterizing a war of aggression as a crime under the Kellogg Pact, have so often been dealt with by the Defense, that I can refer here to the observations presented by them on the subject. I may, in particular, draw the attention of the Court to the arguments put forward by Professor Jahrreiss. I wish to emphasize, in this connection, only the fact that the whole of the persons represented by me are not politicians, not statesmen, not experts of international law, but merely soldiers.

Is it intended to require of the soldiers of a country something that, in the preceding twenty years, the diplomats and legal advisors of the League of Nations were unable to achieve? A soldier bases his judgment predominantly on his surroundings. In at least three cases during the last decade, they noted that the alleged crime of a war of aggression was not persecuted. Neither after Italy's war against Greece, nor after the Abyssinian war, nor after the war of the Soviet Union against Finland, were the soldiers of these countries indicted before a Tribunal.

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The fact always remains that soldiers only plan wars, not wars of aggression. The Prosecution admit themselves that the classification of a war has nothing to do with strategic defensive or offensive.

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Even the Prosecution admit that it is permissible to prepare military plans (including plans for an offensive), to carry them out, and, finally: To participate in a war. The classification of a war as a war of aggression is a purely political opinion. The planning of wars of aggression by soldiers is thus only possible when soldiers enter the political sphere. The decisive point, therefore, is that an officer participating in such planning know that he was concerned with the political plan for a definite plan of aggression: that this war of aggression was an unlawful one and that by his own participation he himself was committing an unlawful act.

Now, how does the history of the last years before the second world war present itself to the military leader? The conclusions to be drawn as to guilt or innocence, do not depend on how, after the war and defeat, these events are today clearly recognizable in their development, but how they were visible at the time to the typical German military leader.

Whenever the World has passed through the upheavals of great wars, the longing for an eternal peace makes itself felt. This longing is strongest in the case of those who made the greatest sacrifices in the war. In the first World War, it was the German officers' families from whom the majority of the indicted military leaders originate.

Those who witnessed the death of their own young generation, are not eager to sacrifice their own sons in a new war. And should precisely these men be inclined in their minds to start another war of aggression?

It was not the waging of wars, but the education of youth for a decent attitude, a clean mind for honesty and comradeship, which was considered by the officer as his real task.

The abolition of the Treaty of Versailles was not a special objective of the German generals, but it was the obvious aim pursued by German policy as such. Reich Chancellor Bruening, who is certainly beyond suspicion, declared on the 15th of February, 1932, that "The claim for equality of rights and equality of security is shared by the whole German nation. Any German Government will have to put forward this claim."

The pages which follow, including the pages up to 28, will be omitted. These pages deal with the relative strength and questions of armament. I shall continue on page 39 at the top of the page.

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The indicted military leaders, as a whole, were without any influence on the course of developments, nay, even they themselves were surprised by them. If in all these years, Hitler's moves were tolerated by foreign countries and, at least, in fact recognized that the reason may be, as Justice Jackson believes, that these foreign countries had "weak governments", but the fact was and remained that there was international recognition. If even foreign countries did not already, at that time, recognize all these developments as the "beginning of the execution" of wars of aggression, how could the German military leaders, as a whole, possibly have been aware of such plans on Hitler's part?

The military expert will have his last doubts about the intentions of the military leaders removed when he looks into the military plans of that period, which contained nothing but directives for defense. In that respect, the final address made by Col. Gen. Beck to a circle of high ranking officers on the conclusion of an operational task concerning the subject "War with Czechoslovakia" may be considered as characteristic. In this address, he spoke with great seriousness of the results of the preceding studies, and stressed the fact that although Germany would be able to defeat the Czech Army within a few weeks, she would subsequently not be in a position to oppose any serious resistance to the French forces, which would, in the meantime, have crossed the Rhine, and invaded southern and central Germany, so that the initial success against Czechoslovakia would in its further consequences have developed into a formidable catastrophe for Germany. These arguments can certainly not be interpreted as indicative of the German generals' lust for war, nor for their approval of Hitler's possible plans of aggression.

In the following period, the German military leaders, likewise repeatedly and earnestly emphasized that German policy -- whatever its aims might be -- should never bring about a situation which would lead to a war on two fronts. In view of the numerous mutual assistance pacts, guarantee obligations, and alliances between all the neighbors of Germany, this attitude excluded as a matter of principle any idea of waging a war of aggression.

History has justified the opinion held by the generals. Hitler disregarded their warnings, and exclaimed in indignation: "What sort of people

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are these generals, whom I, as the head of the State, may have to drive into war? If things were as they shoul be, I should be unable to escape from the generals' pressure for war!"

Only a man who doesn't want to see the facts, the truth, can neglect these facts. If ever there was unanimity among the military leaders, it certainly did not exist with regard to the planning of wars of aggression, but -- based on the very realistic realization of the dangers and consequences of any war for Germany and the world -- agreement did exist in the rejection of such plans of the head of State.

Hitler, the man who should have known best, considered these men unsuitable as "participants" in his plans, and dismissed them. Nor did he consider any other officer from the so-called "Circle of Conspirators" as suitable to become the Supreme Commander, and the future participant in possible plans, but he personally assumed the supreme command of the Armed Forces, and thus became their immediate military superior.

The expressions of his will and his directives to the Armed Forces now had the character of a military order. Although representations were still possible, there was nothing left but the duty of the subordinate to obey, whom the men who gave the orders held to his opinion.

This is certainly a principle governing all armies of the world.

At this juncture, I must refer to a document which the Prosecution has particularly used as a proof of the plans of the "criminal organization." I am referring to the so-called "Hossbach minutes" dealing with the meeting of the fifth of November 1937. What actually did happen?

It was not an "influential group of Nazi conspirators meeting Hitler to consider the situation", but Hitler, in his capacity as head of the State, had convened some military leaders and the Foreign Minister for a meeting. He developed his own ideas! He began by declaring that the problem of Austria and Czechoslovakia must be solved from 1943 to 1945; then he referred to the Poles as possible aggressors. There was no question of settling the Corridor problem, or of conquests to be made in the East, and similar subject.

As regards the reliability of these minutes, the Affidavit No. 210, made by General Hossbach, which I have submitted to the Court, clearly shows that

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Hossbach did not write down the actual text of the speech while it was being made, but made a written account of it from memory a few days later. Everybody knows how easily mistakes occur which are liable to distort the actual events whenever records are made subsequently, using the writer's own words, or leaving gaps where his memory fails him.

The following at any rate is certain:

1. The Reich War Minister and the Commander-in-Chief of the Army did not only not agree to any warlike plan, but points out in all seriousness, and with due emphasis, to the danger threatening from England and France, referring at the same time to Germany's weakness.

2. Whatever may have been the meaning of Hitler's speech, none of the other military leaders were informed of the ideas expressed by Hitler at that meeting. Col. Gen. Fritsch did not even inform his successor when the latter took over from him.

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3. But even if an individual officer had received knowledge of the subject of this conference, no conclusions can be drawn from this fact against the whole of the military leaders. If Hitler contemplated war in six or eight years, this was no reason for uneasiness. In such a long period, numerous political solutions would have been impossible. Nor was it possible to realize Hitler's true ideas from this speech any better than from any of his other speeches.

4. The few officers present at the meeting were bound to draw from his speech at least the positive conclusion that Hitler himself contemplated only an absolutely peaceful development until 1943.

Where, therefore, is the proof of a participation by the generals in Hitler's plans?

Again, the Prosecution are endeavoring to draw conclusions as to the attitude of the generals towards the whole plan from their reactions to the union with Austria and to the Czechoslovakian question. The special emphasis which is laid on the participation of some officers in the conference held between Hitler and the Austrian statesmen, on the Obersalzberg, in February, 1938, is particularly well illustrated by the words which Hitler spoke sometime later; "I selected my most brutal-looking generals to appear as mutes in order to demonstrate the seriousness of the situation to Schuschnigg."

The actual march into Austria and the occupation of that country, were a political action, the background of which was unknown to the generals. The officer saw only that when his troops marched into Austria, they were everywhere showered with flowers, and enthusiastically welcomed by hundreds of thousands, and that there was not a single shot fired.

The deployment plan "Gruen" against Czechoslovakia, to which the Prosecution refer, was not a consequence of the meeting of the fifth of November, 1937, but constituted nothing but a precautionary measure contemplated in the event of a war with France, and was in the hands of the General Staff already on the first of October 1937, that is to say, as early as the meeting of the fifth of November. Although, even in this case, an agreement was reached which provided for the entry of the German troops, the Chief of the German General Staff, Col. Gen. Beck, warned, in a memorandum drawn up with the

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approval of the Commander-in-Chief of the Army, against a policy which might lead to a warlike conflict. In this memorandum, he emphasizes that any war launched by Germany in Europe must ultimately lead to a World War, with a tragic end for Germany. Col. Gen. Beck was dismissed. When Hitler turned directly to the Chiefs of the General Staffs of the Armies on the 10th of August 1938, with the obvious hope of overcoming the resistance of the older Commanders-in-Chief, with the help of the younger generation, the objections raised by these younger officers were such that he became even more suspicious of the generals. Where, then, was the enthusiasm of the generals for Hitler's plans? Where was their participation in them?

Hitler's constantly changing utterances in the Sudeten question did not enable the military leaders either to realize that he might seriously plan a war.

On the fifth of November, 1937, he declared that he would settle the Czech problem from 1943 to 1945.

On the 20th of May, 1938, he declared in a military directive: "I do not intend to smash Czechoslovakia in thenear future by military action without provocation."

On the 30th of May 1938, he issued a directive to the Armed Forces inwhich he said: "It is my unalterable decision to smash Czechoslovakia by military action in the near future." On the 16th of June 1938, he said in another directive, "The immediate objective is the solution of the Czech problem by my own free decision." On the 24th of August1938, he specified that an "incident" in Czechoslovakia must be the prerequisite of a German attack.

On the 16th of September, 1938, the military preparations began at the frontier. But political negotiations were opened simultaneously. On the first of October 1938, the territories ceded were peacefully occupied in accordance with the political agreements.

The Protectorate was occupied through Czechoslovakia as a consequence of a purely political action, the military leaders received only the order for apeaceful entry.

When, subsequently, a written directive to the Army High Command

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(OKW) ordered in 1938 that the Army was to devote itself until 1945 exclusively to the tasks of its organizaton and structure, and its training, and that it should abstain from any kind of preparations for a war, including preparations for the defense and safeguarding of the frontier, the military leaders gained the firm conviction that a peaceful development had been secured. Which of these events was to permit the conclusion that the military leaders had participated in a general plan directed to a war of aggression? In all cases, the military leaders did nothing but execute their purely military orders after political decisions had been taken.

The political development which led to the war with Poland, has been sufficiently dealt with in this trial. It is merely my duty to add an observation on how this development looked in the eyes of the military leaders. How were the relations between the generals and Hitler in that period? He was the Supreme Commander of the Armed Forces. In other words, he was their immediate military superior. Their political objections had everywhere been refuted by events, not only in the case of the occupation of the Rhineland, but also in connection with the union with Austria, in the Sudeten problem, and on the occasion of the creation of the Protectorate.

It is easy, from our present knowledge of things, simply to deny these facts, but in those days, the belief in Hitler's political ability was a tangible reality with the majority of the German citizens and soldiers. And he had achieved all his successes only by political means, not in a single case by war! To realize that he would risk a war, a war of aggression with Poland, the military leaders would have had to be crystal gazers. How were they to realize and recognize his aims? The foreign office was barred from informing them of the political situation. Neither as individuals nor as a group, were they able to participate in political decisions. The proposals made by the German Foreign Minister to the Polish ambassador in October, 1938, the conferences between Hitler himself and the Polish Foreign Minister, the discussions of the German Foreign Minister in Warsaw, could only be judged by the soldiers as attempts at a political settlement of the Polish problems, but never as an indication of an intended war of aggression.

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The first military directive of April 1939 amounted to nothing more than the preparation for an "eventuality." If a military leader considered the situation realistically, the assurances of British and French help for Poland, were bound to make any idea of a war of aggression against Poland appear absurd.

The conference held on the 23rd of May, 1939, was a unilateral speech directed by the Supreme Commander to the military leaders whom he had summoned to his meeting. When Hitler declared, in the course of his address, "I would have to be an idiot to slither into a World War on account of the lousy Corridor problem like the inefficient statesmen of 1914", and when, in reply to an observation made by Field Marshal Milch that the production of heavy bombs was quite inadequate for the case of a war, and must be immediately increased, Hitler said that there was ample time to take steps in that matter and the military leaders were bound to conclude from all this that Hitler had made military preparations only to support the initiated political moves, but that he would on no account risk an armed conflict with Poland.

Nor was the conference held on the 22nd of August, 1939, a consultation with advisors, but an address by the Supreme Commander directed to the military leaders whom he commanded. When Hitler used the words in his speech "We have no other choice; we must act", he did not indicate how he intended to act. At any rate, the military leaders were, by no means, under the impression that a war against Poland had been decided upon. On the contrary; the obvious relief with which Hitler announced that a commercial agreement had just been made with the Soviet Union, impressed all those present at the meeting with the firm belief that he would find a diplomatic solution also in the Polish question.

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Until then, Hitler had been a past master in seizing the right opportunities. Nobody ever used bluff with greater virtuosity than he. Bluff and military pressure, however, are permitted instruments of policy. It is quite wrong to conclude that a man, who practices or supports one or the other of those methods, thereby also approves of a war of aggression. If Hitler should really have conceived the plan for an aggression against Poland for some time past, the military leaders were not even able to realize this plan as such. In the last resort, they were, themselves, "bluffed".

But what were they do do once the die was cast? Were they to declare "We are not coming along", or were they to refuse to fall out?

They had to do their duty. They were in exactly the same situation as the Russian Army commanders, who entered Poland a few days later because of Stalin's orders.

Once the war had begun, they were under the rule which Napoleon explained to his generals in these words:

> "You must remember, gentlemen, that in war the value of obedience is higher than that of courage."

The Prosecution renders the military leaders, however, not only responsible for the outbreak of the war, but also forits extension and for its conduct in general.

The political and military reasons which have led to the extension and the shaping of the events of the war have been so often and so completely examined in this trial that I must refrain at this juncture -- in view of the limited time which is at my disposal -- from reopening this matter in a general survey.

As regards the military leaders, the political background of a second World War presents itself clearly as the consequences of the conditions created by the Treaty of Versailles. This seemed to them, in the last resort, morally to justify the German action against Poland.

The war in the west was the lastthing which the German generals desired. When England and France declared war, this was certainly not a fact involving the responsibility of the German military leaders. The extensions

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which occurred during the further course of the war cannot be considered as a consequence of free decisions or of a preconceived plan. The necessities of a struggle for victory or defeat, once a war has broken out, strictly prescribe even to nations, the road which they have to follow. In these circumstances, the soldier is nothing but the sword which must hit and the shield which must absorb the blows in order to prevent the death of their own nation.

The evidence produced in Raeder's case has made it clear beyond doubt by what considerations the group of officers were guided officers, who prepared the occupation of Denmark and Norway. We know that in this case Germany forestalled an Allied action by a very narrow margin. If the Commander-in-Chief of the Navy, himself, held the conviction that there was an absolute necessity for averting the most serious dangers from Germany, how could, in these circumstances, the troop commanders, who are members of the so-called "group", have held the opinion that there was no reason to fear these grave dangers? Would the Allied Chiefs of General Staffs and Field Commanders have had the right, or the possibility, to refuse to embark their troops, which took place for the same purpose--before the German action was undertaken? Moreover, only a limited numbe of military leaders had any knowledge of this action at all. All the other officers, covered by the indictment, only learned over the radio that the operation had been undertaken. How can they, therefore, be accused of taking part in planning aggression against these countries?

In the same way, the reasons for, and the conditions of the Western campaign, have been discussed conclusively. The attitude which the Generals adopted in this case constitutes a particularly striking refutation of the assumption made by the Prosecution. The Army High Command, itself, sharply turned against Hitler's decision to launch an attack in the West, in particular, on account of the intended violations of neutrality. The clash with Hitler was so serious that in his address to the Commanders-in-Chief on the 23rd of November, 1939, he directed exceptionally bitter attacks against his generals; reproached them with ignorance of foreign political questions, and referred to them as an "obsolete upper class which had already failed in 1914." The same evening, the Commander-in-Chief of the Army sent

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his resignation, which, however, was not accepted.

Thus, the Army High Command sharply opposed Hitler's plans. There were serious clashes between Hitler and his generals, and, finally, the Commanding Chief of the Army resigned. What else could have been expected of the generals? If they had decided on munity before the enemy, even such action would completely have failed to produce any effect, owing to the strong position which the victorious Hitler occupied at that time in the German nation. Beyond that, the Army High Command, still hoping that there might be any possibility of peace, delayed the beginning of the attack until the Spring of 1940. Although from the legal point of view the advance through Belgium and Holland constitutes an objective violation of neutrality, the military leaders were bound to consider this action as necessitated by the requirements of war, and justified by the information which they had received concerning the threat of violation of neutrality on the part of the Allies. This was all the more true as they had no general knowledge of the political situation, and no influence at all on the decisions to invade these countries.

The reason which led to the German action against Yugoslavia and Greece have been sufficiently cleared in the collection of evidence from Goering, Keitel, and Jodl. The war against Greece was a logical consequence of the action which Italy had taken on her own; the war against Yugoslavia was a consequence of the sudden coup d'etat at Belgrade. As to the military leaders, they had not even considered a war in the Balkans in the orbit of their studies and considerations, not alone have any kind of responsibility for an outbreak.

Now, as regards the possibility of an entanglement with Soviet Russia, the military leaders had not contemplated it in any way when the war began, nor did they make any preparations for such a case. The Army High Command did not even possess the necessary maps! When Hitler, subsequently, caused them to make such plans, he justified this by the necessity to forestall a threatened intervention by Russia in the war. The Russian action against Finland, the Baltic states, and Bessarabia appeared to confirm the well-foundedness of this opinion. Reliable information about strong Russian troop concentrations were to them a further indication of a threatening dan-

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The evidence given by Field Marshall von Rundstedt and General Winter shows that the German attack ran into strong Russian preparations for deployment, which contributed substantially to confirming in the minds of the military leaders the conviction that Hitler had been right in saying that they were engaged in a genuine preventive war.

The ground organization of the Soviet Air Force had been advanced so close to the frontier, that this fact alone necessarily led to the conclusion that the Russian intention to attack musthave been a certainty. 10,000 Soviet tanks, 150 Soviet divisions, and an increase from 20 to 100, in air fields in Eastern Poland alone, were reported at the time. If the military leaders considered in these circumstances that Hitler's decision to wage a preventive war was justified from the military point of view, their participation in this war in the execution of their duties as soldiers, can never have been a crime.

The military plan known under the code word "Barbarossa", which the Prosecution considers as the planning of a war of aggression, had been contemplated until the last moment as a pure eventuality, as a precautionary measure in case the Soviet Union changed her attitude. Even after February, 1941 -- apart from the high ranking officers of the Armed Forces, High Command (OKW), the Army High Command (OKH) and the Commander-in-Chief of the Air Force -- only 18 out of the 129 indicted military leaders had heard of this plan at all, and only as a plan to be used if the need arose. The Commander-in-Chief of the Army, Field Marshal von Brauchitsch, had given a warning also in respect to this eventuality, by referring to serious military objections; but the majority of the officers concerned, only received knowledge of it immediately before the beginning of the war, when the die had already been cast. And they received this knowledge only by the fact that they were given certain orders.

How could the 18 officers who heard of this plan have effectively and successfully opposed Hitler's intentions? The reasons indicated by Hitler justified the war. To wait until the Soviet threat became a real attack would necessarily have led to the destruction of the Reich as far as could be judged from the main point of view. The other military leaders had no possibility at all of rejecting Hitler's decision.

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The beginning of the war against the United States has also been discussed already. War was declared without the opinion of the Supreme military leaders being previously asked. If even the Army High Command (OKH) learned only the accomplished fact, how can the other military leaders have had any knowledge of Hitler's intention to begin this war? As regards the Navy, which could only play a part in waging this war as long as the land or air forces of the United States did not intervene in Europe or Africa, it is a fact that hostilities had practically been opened before the declaration of war by Roosevelt's firing order, although the German forces strictly respected the 300-mile limit, which was not justified under International Law. Evidence in the case of Raeder and Doenitz had clearly shown that all directives emanating from the High Command of the Navy were intended to avoid a conflict with the United States under all circumstances.

I am now coming to the conclusion of this Chapter: What responsibility have the 129 indicted officers as a group in the extension of the war?

I believe that they have no other responsibility than that which is borne by every soldier who fights in a war for his country on the spot where he is ordered to fight.

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I now come to the chapter, "Crimes against the rules of war and against humanity". The accusation that the military leaders concerned took part in 1. The planning, 2. The execution of a criminal, total war, in particular also in crimes against enemy armies and against prisoners of war as well as against the population in the occupied territories, hits the German generals particularly hard. These generals are not concerned with minimizing any possible guilt of their own, but with finding the historic truth. Anyone who desires to form a just opinion of the terrible events of the last world war must realize that actions and omissions of individuals and nations are not merely the outcome of a free will or of a bad or good faith. Such actions and omissions arose, on the contrary, from the mental background of our epoch, and nobody can avoid these influences.

As early as at the beginning of the 19th Century the nations had to face the problem of power in all its forms. The various doctrines, the materialistic conception which generally prevailed after the second half of the nineteenth century, and, finally the excessive Nationalism noticeable on all continents, were phenomena which -- irrespective of whether they were good or bad -- did not remain without influence on the attitude and actions of the nations. Although these ideas did not necessarily have to lead to the results with which we are faced today, they are, in the last resort, the intellectual starting point from which the second world war and its consequences originated. There is another aspect which must not be overlooked in any just appreciation of the general trend of events, in particular, as regards the formidable sacrifices of human lives. That is the devaluation of men, which is due to development noticeable in all civilized nations, and which has been called "massification". The more the nations multiplied, the lower, unfortunately, sank the value of the individual man. But, above all, technical progress has contributed considerably to this devaluation. If modern technology supplies man with the means of destroying tens of thousands of human lives in one blow, if air raids cause 200,000 deaths in one single night, as at Dresden, if one or two atom bombs are sufficient to kill a hundred thousand men, the value of men must necessarily sink. The same phenomenon made its appearance in the first

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World War, as well as in the Russian Revolution and in the Spanish Civil War. The German military leaders struggled against this development, but as children of their epoch it was just as impossible for them to avoid the influence of the spirit of that epoch as it was for the soldiers of the other countries.

The second world war, however, was not only a purely military war, but besides, in its effects even predominantly, an ideological war. In any clash of ideologies the struggle becomes a struggle of annihilation -- a total war. Ideological wars have always demanded streams of blood and were accompanied by unimaginable atrocities. The religious wars and the sacrifices and cruelties of the great revolutions are examples of this theory. Thus, the second World War, as a conflict of ideologies, was conducted on both sides with such vigor and perseverance that it finally led to the full utilization of human resources and material resources of every nation. In other words, it produced "total war" in the truest sense of the word. If, beyond that, the term "total war" was extended by the politicians on both sides to mean the total destruction of the enemy ideology, this already shows what an ideological conflict involves.

What was the attitude of the general to this problem? The group of generals covered by the indictment consisted exclusively of men who had chosen the profession of the soldier as the mission of their lives. They were mature men, with an experience of life, who had not put on a soldier's uniform only under the National Socialist Regime; but the mature man has a stronger sense of tradition, justice and law, than the young man.

Thus, soon after the outbreak of war, it became manifest also in this instance that the military leaders did not in any way agree with Hitler's revolutionary ideas on the methods of warfare and refused to make these ideas their own. The generals were firmly resolved to conduct the war according to the old traditions, which implied a strict observation of the rules of warfare. The reproach addressed to the generals by Hitler in November, 1939, on account of their "obsolete conception of chivalrous warfare", speaks a clear language. That this attitude of the generals did not change subsequently is shown by the fact that, in the later course of the war, a great number of the indicted generals were relieved of their

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functions on account of this attitude in spite of their military successes.

Three field marshals have appeared as witnesses before the Tribunal. Did anyone gain the impression that these men were criminals and had committed crimes against the rules of war and against humanity? These officers know from their experience during the first World War that any violation of the rules of war ultimately always turns against the soldiers of their own army. Until the last moment, they conducted the war against the Armed Forces of the enemy in accordance with the rules of war. Field Marshal Alexander himself confirmed that the German troops fought "decently and like gentlemen."

The military leader who is responsible for operations at the front line has only one interest, namely, that everything is quiet in his back. This alone will induce him to avoid anything that may cause uneasiness among the population. He knows only too well that all unnecessary measures of compulsion only lead to hostile reactions and that these, in turn, bring about intensified reprisals which can only produce rebellion. If one has no faith in the conception of soldierly honor and in the Christian mentality of the military leaders, one should at least believe that sound reason caused them to treat the population of the occupied territories in accordance with International Law, to spare their private property and to assist them within the limits of their possibilities in their peaceful work.

That, on the other hand, open resistance in the rear of an Army cannot be tolerated and that in such cases also the military leaders took the corresponding counter measures, is obvious. The threat of severe punishment by the Allied military governments in the case of any rebellion or possession of arms in Germany, even now after the end of the struggle, prove it also.

As a consequence of the double aspect of the second World War -- the military on the one hand, and the ideological on the other -- the conduct of the war, from the highest levels immediately below Hitler down to the lowest executive organs, was sharply separated. The Armed Forces (Wehrmacht) was concerned only with the purely military conduct of the war, while anything connected with the parallel ideological and political struggle

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was entrusted to political agencies and their executive organs.

Thus, contrary to former custom, the parts of the enemy country, which had been conquered by the Armed Forces, were, as a matter of principle, withdrawn from the territorial control of the Commander-in-Chief immediately after occupation, and placed under the authority of the representatives of the political leadership. Therefore, any thing in the nature of possible crimes which may have been committed in territories not under the territorial control of the indicted group of persons must be excluded in this trial when the responsibility of the so-called "group" is to be ascertained.

The Protectorate and the Government General of Poland, Norway, Belgium and Northern France, the remainder of occupied France, Luxembourg and Alsace-Lorraine, Croatia, Yugoslavia and Greece, Slovakia, Hungary and Italy, were not placed under the territorial authority of the military leaders.

In the Soviet Union, the area of operations had from the very outset been limited by Hitler's order as narrowly as possible, and therefore comprised only the territory within immediate reach of military operations until, finally, territorial control was limited to the immediate combat zones, that is to say, to the area roughly 10 km. behind the first front line. Outside this strip of land the territories were placed under the administrative authority of political agencies.

Reproaches directed against the "military commanders" or "Wehrmachtsbefehlshaber" appointed in the individual countries and territories are irrelevant in this connection because these officers are not included in the indictment.

This organization of the administration shows that Hitler, out of his distrust for the military leaders on account of their attitude to the questions of warfare and humanity, had quite consistently entrusted the execution of the ideological and political struggle to the political agencies and their executive organs.

The Commanders-in-Chief, therefore, held territorial authority locally only insofar and as long as any particular area in enemy territory was part

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of the area of operations, and consequently their responsibility is limited in the same way.

But even inside areas of operations, all tasks not immediately connected with operational events were with drawn from the influence of the Wehrmacht and had been transferred to the responsible execution by completely independent political agencies. This includes, for instance, all measures of a political and police character, the economic exploitation of the occupied territories, measures pertaining to the realm of culture, and man power problems. There remained therefore for decision by the Commanders-in-Chief, apart from the purely military operations at the front line, only military security and the establishment of local administration within the areas of operation.

Moreover, they were kept extremely busy in the area of operation with the tasks connected with the conduct of the operations, the supply of their troops and with military security, so that it was hardly possible for them

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to concern themselves with other tasks. It was their duty to be with the units under their command in the area of operations. Their planning and their care had to be devoted, in the first place, to the unceasing struggle and to their troops. These facts supply the simple explanation why it was possible to keep so many things and measures connected with other non-Army agencies a secret, even in the area of operations and why they did not come to the knowledge of the military commanders.

The Waffen SS units were subordinated to the commanding agencies of the Wehrmacht as combat units, exclusively as regards their fighting service, and their supply. Both as regards organization and personnel, discipline and judiciary, the Reichsfuehrer SS Himmler alone had authority to give orders.

All other organizations of Hitler, such as the special purpose groups (Einsatzgruppen), police SD, Organization Todt, etc., received their instruction and directives exclusively from their own superior authorities, and not from the Command-in-Chief of the Operational Sector.

This regulation of authority and division of responsibility, practically limited the Commander-in-Chief to the conduct of the troops under his command in the area of operations.

After having thus clarified the limitations of the responsibility of the military commanders, I now propose to turn to some special cases, and by way of introduction, I may say concerning the documents used by the Prosecution that extracts from German directives, torn from their context, often do not reveal the real meaning of the directives, and lead to wrong conclusions. Other documents, in particular some of those presented by the Russian Prosecution, represent findings of certain Commissions. Nobody can check up the figures contained in these documents, for instance, concerning murders, particularly, as all specifications concerning the exact time when these crimes were committed, and other substantial data, are missing. The exact figure of dead does not, in itself, prove that these dead were murdered by Germans.

In this way, the seemingly crushing evidence of the Prosecution is melting away upon close inspection, particularly when we consider that these data were collected by numerous commissions in all countries, and from hundreds of

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witnesses, over a period of several months, and include events which occurred not in one small area placed under the authority of a Commander-in-Chief, but in vast territories, and over long periods.

In spite of great difficulties, which the Defense had to overcome in the collection of their evidence, I was able to submit to the Tribunal very comprehensive Defense evidence, together with observations and comments which I made so far as I was givem an opportunity.

As I am again working under a limitation of time, it is impossible for me fully to exploit even part of this counter-evidence. I, therefore, propose to select only a few individual cases to which I attribute special importance.

There is the Kommissar Order, which plays an important part, and which provided for the immediate shooting of political Commissars. When Hitler began by orally announcing this order, which he alone had planned, in March, 1941, he at once met with the strongest inner opposition on the part of all the generals present, which was due to the latter's soldierly and human attitude. After all endeavors made by the generals, the Army High Command and the Armed Forces High Command, to prevent the issuing of this order of Hitler had failed, and the Kommissar Order was issued some time later in writing, the Commanders-in-Chief of the army groups, and Armies, either did not pass this order on to their troops at all, or they ordered on their own authority, that it should be eluded. They did so in full consciousness of the danger that they might be heavily pubished for open disobedience in war to an order of the Supreme Commander. The order on the preservation of discipline issued by the Commander in-Chief of the Army, in pursuance of the Kommissar Order, had the desired effect. It gave the Supreme Commanders at the front a loophole to act in accordance with their own conception. Thus, the military leaders achieved the result that the Kommissar Order was not generally executed within the Army groups and the Armies. Ultimately, it was rescinded upon the energetic representations of the Chief of the General Staff.

THE PRESIDENT: Is there any evidence in writing to that effect?

DR. LATERNSER: Yes, Mr. President. That part of the evidence is contained in the affidavit which I have presented, and the last paragraph can be proved by document 301-B.

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THE PRESIDENT: You mean that there was, in writing, an order by Chief of General Staff Zeitzler rescinding that order?

DR. LATERNSER: I think I have been misunderstood. The last paragraph which I just read came from General Zeitzler; the order was rescinded and this is true by means of document 301-B which I have presented to the High Tribunal That document is available in a translation.

What more can be expected of the military leaders? The order did not emanate from them, they did not pass it on. They did not execute it; they endeavored to have it rescinded, and finally reached their objective. Here lies their common link and their unanimity, and precisely, the handling of the Kommissar Order is evidence of the most conclusive kind of the fact that the generals' attitude was beyond reproach.

In the same way, the directive concerning the restriction of the administration of military justice in the East, met with the opposition of the Commanders-in-Chief who were present when it was orally announced. It is due to the generals' negative attitude that Hitler gave up his original plan, which provided for a complete elimination of the administration of military justice in the East, and limited himself to certain restrictions.

But in this connection, the additional directives issued by the Commander-in-Chief of the Army concerning the maintenance of discipline, is of the greatest importance. The Commanders-in-Chief of the Army groups and of the Armies, acted as a group in accordance with the provisions of this additional order, and took vigorous measures in all cases where members of the Armed Forces had committed offenses against the civilian population. In serious cases, they had death sentences rendered and executed. Even simple road accidents, in which Russian civilians were injured, were brought before military tribunals, and the persons responsible were taken to account. This is proved, among other things, by the evidence given by Field Marshal von Lieb. Here again, therefore, precisely the officers included in the indictment took steps to prevent the full execution of one of Hitler's orders, which was in contradiction to their inner conceptions.

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The attitude which the military leaders adopted with regard to Hitler's Commando order, was so unfavorable from the very outset, that Hitler was not only compelled to draw up this order personally, but he also found it necessary to threaten with exceptionally severe punishment, if his order was not executed.

And yet, the Commander-in-Chief in Africa, Field Marshal Rommel, destroyed the order immediately on receipt on account of his inner opposition to it.

The Commander-in-Chief West, Field Marshal von Rundstedt, took steps to see to it that the order was not carried out, but eluded. The Commander-in-Chief Southwest, Field Marshall Kesselring, issued additional regulations, which secured that the Commando troops would continue to be treated as prisoners of war. As regards the eastern theater of war, the order was without significance any way.

These examples clearly show that here again the military leaders found ways and means to prevent the execution of the Commando order, which was in contradiction to their soldierly conceptions.

The individual cases mentioned by the Prosecution must be left out of account in this connection, as they are concerned with individual acts, which have already been the subject of special investigations or will be investigated later.. But they do not, in any way, reflect the typical attitude adopted by the military leaders, which alone is relevant in this trial.

It seems to me that there is still the following question of importance: Could the military leaders not rely on the facts contained in this order being true? Were they not bound to assume that the order had been examined in its relations with international law, before it was issued? Is this order at all inadmissible under international law? Does it still come under admitted reprisals?

That will be a matter for the Tribunal to decide, if it attributes to this order of Hitler some importance in the case of the persons whom I represent.

As regards the treatment of prisoners of war, we have only to examine whether the Commanders-in-Chief, in execution of a common plan, ordered or negligently tolerated any kind of mistreatment of prisoners of war in the areas of operations.

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If, during the first period of the Russian campaign, the Russian prisoners of war could not be accommodated and fed in accordance with the provisions of the Geneva convention, this is exclusively due to the fact that certain difficulties are, at first, unavoidable when hundreds of thousands are taken prisoner. When, after the end of the war, even the Allies were faced with similar difficulties, when all of a sudden great masses of Germans were taken prisoner, the Allies will certainly not now be willing to allow themselves to be accused of crimes against humanity.

Moreover, the individual cases put forward by the Prosecution, have been invalidated or refuted by counter-evidence from all theaters or war. The military leaders in all theaters of war forestalled possible excesses against prisoners of war by issuing appropriate orders, and calling to account the persons responsible for offences connected with the treatment of prisoners of war. They neither ordered nor knowingly tolerated any mistreatments, or even killings of prisoners of war.

I shall now omit the remaining part of that page and the following page, and I continue at the end of page 70.

But the heaviest accusation lies, no doubt, in the assertion of the Prosecution that the Commanders-in-Chief had full knowledge of the tasks and the activities of the special purpose groups (Einsatzgruppen), which were allegedly under their command, and that they not only tolerated, but even actively supported the execution of these ranking groups. In this, the Prosecution rely on elements given by the High SS leaders Ohlendorf, Schellenberg and Rode as well as on Document L i 80. Is this not highly doubtful evidence? Can this evidence really convey to the Tribunal the conviction that the generals of the German armed forces offered their assistance in these most abominable mass exterminations? My answer is in the negative, and I give it with the fullest conviction.

The evidence given by the witness, Ohlendorff, under whose command thousands of Jews were murdered, has been refuted by General Woehler's evidence in all its essential points. Schellenberg, who occupied one of the most influential positions in the most notorious agency of Germany -- the Reich

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Security Main Office (RSHA) -- one of Himmler's friends cannot supply any real facts, but gives us only assumptions.

He thinks he can assume that General Wagner von Heydrich was fully informed in June, 1941, on the planned Mass Exterminations. When did this witness arrive at this incriminating assumption; towards the end of 1945, when he was taken into custody, and when he was on the lookout for his own advantages? Under cross examination, he is unable to indicate any facts from the year 1941, on which such an assumption might be based, but he nevertheless made the assumption, and for the first time in 1935.

Could General Wagner, a highly qualified officer, who gave his life in the course of the 20th of July, 1944, fighting against National Socialism, have reported nothing about this atrocious information to his direct superior, Field Marshal von Brauchitsch, with whom he had particularly close relations for a great number of years, and to whom he had access at any time in his capacity of Quarter Master General:

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This assumption is impossible -- and that was also what Field Marshal von Brauchitsch confirmed in the witness stand.

Schellenberg, furthermore, believes that he can assume that the Ic-officers were informed about the functions of the special purpose groups (Einsatzgruppen) in connection with mass extermination at a meetinghold in June, 1941. But he adds the further assumption that these Ic-officers had informed the Commanders-in-Chief. This means that two of Schellenberg's assumptions linked together, furnish the proof that the Commanders-in-Chief had knowledge of these planned mass extermination.

And how did Schellenberg react in cross examination to the assumptions made by him?

I submitted to him a sworn statement by a man who was present at the Ic-meeting, in which General Kleikamp expressly declares that there had been no question of planned mass extermination, which must cause Schellenberg's structure of lies fall to the ground.

His reply is that it was not up to him to decide upon the value of the two oaths. He, thereby, places his assumption to the contrary, which is a pure assumption founded on no facts -- because he was unable to indicate facts in cross examination -- on the same level as the positive statement made by one of those present at the meeting, according to which no information had been given on the planned mass extermination.

That much, as regards Schellenberg's evidence I ask the Tribunal to take full cognizance of the minutes under cross examination of this witness before the Commission

The witness Rode, who islikewise a high ranking SS leader, also wishes to make a charge. He asserts that the special purpose groups (Einsatzgruppen) were fully placed under the authority of the Commanders-in-Chief, but he restricts this statement by adding "To the best of my knowledge". This deprives the evidence of the witness of all its value for the Prosecution.

I will now turn to Document L 180, according to which the Commander-in-Chief of the Armoured group four, Col. Gen. Hoeppner, was to have entertained a particularly close cooperation with the special purpose groups.

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Is it not highly dangerous to use such a report for finding the trut as it only contains the views of its author ? Nor does it contain any indication as to the nature of this cooperation, or to the object to which it referred. The special purpose groups and Commandos, however, also had to carry out supervisory and reviewing functions, as it has been proved, and only these were known to the Commander-in-Chief. If there was any cooperation at all, it could never have been in connection with mass executions of Jews.

Col. Gen. Hoeppner, who also lost his life as a victim on the 20th of July, 1944, would have been the very last to lend his assistance to mass murder. Is it really believable that a general, who wants to remove a syster of Government, surely because of his special objection to its methods, should previously have taken part in the mass murders committed by this very system?

To my profound regret, I am unable to call Generals Wagner and Hoeppner as witnesses, both of them had not conspired with this system, bu against it, and both sacrificed their lives for this conspiracy.

It is rather peculiar to note that, in this instance, the prosecution who easily truns ironical whenever the defendants invoke dead witnesses in their defense, uses itself, invokes the dead, in an endeavor to prove that the military leaders had knowledge of planned mass exterminations and participated in them, and the dead, unfortunately, are unable to defend themselves against such attempts.

In contrast to these inconclusive proofs advanced by the Prosecution I have shown by numerous affidavits that

1. the special purpose groups (Einsatzgruppen) were not placed under the authority of the military leaders, which is also shown with special calrity by Prosecution Document No. 447 PS,
2. General Wagner clearly expressed this to General Judge Mentel and
3. the military leaders had not been informed of planned mass executions.

The Tribunal will now have to decide whether it wants to give greater credence to the SS leaders Schellenberg, Ohlendorf and Rode, who are trying

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for the last time, with all their hatred, to draw the military leaders into their own disaster, than to the officers of whom the Tribunal was able to obtain itself a personal impression.

Now as regards to the other counts of the indictment, such as mistreatment of the civilian population as well as destructions and lootings I propose to refer to my submission of evidence on these counts, which showed, with all desirable clarity, that the militaryleaders intervened most severely in all cases, of offenses brought to their knowledge.

As regards the participation of military leaders in the deportations of workers, the Prosecution have been unable to submit really conclusive evidence, the question concerning the shooting of hostages must be left out of the count in this trial, because the territorial military commanders in the occupied territories, insofar as they ordered any shootings of hostages at all, are not included in the group of persons represented by me.

Owing to lack of time, I propose to terminate my observations to the war crimes and crimes against humanity at this juncture, But one thing stands out very clearly :

The military leaders did not act in execution of any plan having the object of committing war crimes and crimes against humanity. On the contrary, guided by the spirit of decent soldierdom, they conducted the war in a chivalrous way, and knew how to prevent the practical execution of all orders of Hitler which were not in keeping with their won conceptions. It may perhaps, strike the Tribunal that in all these observations, I have only concerned myself with the field commanders of the Army, and with land warfare, but not with the generals of the air force and the admirals of the navy, who are also said to belong to the so-called group. I can only defend, however, what is being attacked. None of the submissions of the Prosecution concerning the Commission of war crimes and crimes against humanity concern the commanders-in-chief of the navy or of the air force at all. The only reproach against the Navy, namely that connected with the directives for submarine warfare, is exclusively directed against the two grand admirals, who have assumed full responsibility for their orders,

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while the naval commanders-in-chief in the field had nothing to do with these orders at all. No charges have been preferred against the commanders-in-chief of the Air Force. If 17 admirals and 15 generals of the Air Force are included in the so-called "group", this constitutes the most striking proof against the theory of the existence of this "group" and readers any special defense of the admirals and of the Air Force generals superfluous.

The last count of the indictment, that the military leaders had rendered themselves guilty because they tolerated in practice Hitler's criminal plans and deeds, instead of revolting against them, returns us again to the central problem of these proceedings against the soldiers :

To the problem of the duty to obey.

It has been repeatedly stated that the Fuehrer order was not only a military order, but that it had, over and above this, a legislative effect.

Thus, were the military leaders not bound simply to obey the law ? If the duty to obey does not include an order, having the commission of a civil crime as its object, it is because the order demands an action directed against the authority of the State, but can there be any question of a crime, if the order requires action, which is not directed against the authority of the State, but on the contrary, is demanded by that authority ? And even if we reply to this question in the affirmative : What citizen of any country in the world, is in these circumstances, in a position to recognize the criminal nature of his action ?

It is not sufficient, for the ascertainment of guilt, that the Prosecution explain what the defendants should not have done, but it must at the same time, have told us what they might, ought and should have done, on the grounds that any legal prohibition should also include a positive directive. If I suppose that, in spite of the sovereignity of the individual states, a legal obligation had existed for the generals to act in accordance with international law and moral requirements even against the law of their own state, such a legal obligation could only be affirmed if the corresponding action offered a chance of success after all : to allow oneself to be hanged, merely to evade one's duties -- to betray one's country

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without any prospect of being able to change matters, cannot be demanded by virtue of any moral. Ultimately, there is no obligation for anybody to become a martyr.

And what were the possibilities of passive or active action against order and law on the part of the indicted generals ? What were the chances of success ? The simple rejection of unlawful plans or orders, be it by contradiction, warning, representations, or similar manifestations, would have been possible, but remained without any effect in practice. To a certain extent, this possibility was ineffective for the simple reason that the generals received no knowledge of many of the objectionable things. In the political and ideological struggle, these methods were so carefully kept a secret from the generals, that they did not even hear about mass executions, and would have been all the more unable to prevent them;

In the military sphere of warfare Hitler's closest assistants may, perhaps, have been heard on the question as to how a resolution was to be carried out militarily, but they were never heard when the resolution itself was made.

In the majority of cases, the military leaders, who are indicted before this court, only learned of these resolutions at the moment when they were called upon them out as soldiers, as far as possible, they made objections. The Commander-in-Chief of the Army, Baron von Fritsch, gave a warning, before the Rhineland was occupied, against a policy which might produce a war on two fronts, as well as against rearmament, and, was dismissed. The Chief of the General Staff, Beck, raised political warnings, and -- was relieved of his functions. Col. Gen. Adam also opposed the policy, which was about to be pursued, and -- was dismissed. The Commander-in-Chief of the Army made representations in connection with outrages in Poland. The consequences was -- that the military agencies were excluded from the administration of the occupied territories. Warnings, objections, material representations were never successful, but in the majority of cases, they only produced the effect that Hitler maintained his own opinions more stubbornly than before, and insisted on their being carried out.

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If even, the steps taken by the highest commanders thus remained without success, what could the other indicted commanders of lower rank have achieved in this respect ?

A democratic politician may say they could have resigned. That is a practical possibility for a parliamentary minister in a democratic country,- a German officer could not resign. He was bound by his military oath, which was a supreme obligation to the old officer, even more than to anyone else. The German general could only ask for the approval of his resignation,

Whether this request was successful, was outside his influence. Moreover, during the War, Hitler prohibited any such request, and placed a resignation on the same footing as desertion.

A collective request for resignation, which would have been unrealizable in practice, would have amounted to mutiny, and would merely have served to bring compliant elements into the leadership, but would never have impressed Hitler so much as to cause him to change his policy, his orders, or his methods. The attempts at resignation, which were actually made by some field marshals, and in particular, also by the commander-in-chief of the Army in November, 1939, were flatly rejected. The resignation of the field commander would, nevertheless, have been an obvious duty, and would have had to be enforced with all possible means. If these leaders had once been faced with tasks, in which according to their conception the honor of the German nation had been at stake. But precisely, these tasks, among which I count the mass exterminations and the atrocities in the concentration camps, were carefully kept a secret from the generals, who were never called upon in such matters.

Now, would open disobedience have been more easily possible, and would it have involved greater chances of success ? The American Chief Prosecutor in his report to the President of the United States, expresses himself, as follows on this point :

"If a soldier drafted into the Army under his service duty, is included in an execution squad,

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This assumption is impossible -- and that was also what field Marshal von Brauchitsch confirmed in the witness stand.

Schellenberg, furthermore, believes that he can assume that the Ic-officers were informed about the functions of the special purpose groups (Einsatzgruppen) in connection with mass exterminations at a meeting held in June, 1941. But he adds the further assumption that these Ic-officers had informed the Commanders-in-Chief. This means that two of Schellenberg(s assumption linked together, furnish the proof that the Commanders-in-Chief had knowledge of these planned mass exterminations.

And how did Schellenberg react in cross examination to the assumptions made by him ?

I submitted to him a sworn statement by a man who was present at the Ic-meeting, in which General Kleikemp expressly declares that there had been no question of planned mass extermination, which must cause Schellenberg's structure of lies fall to the ground.

His reply is that it was not up to him to decide upon the value of the two oaths. He, thereby, places his assumption to the contrary, which is a pure assumption founded on no facts-- because he was unable to indicate facts in cross examination -- on the same level as the positive statement made by one of those present at the meeting, according to which no information had been given on theplanned mass extermination.

That much as regards Schellenberg's evidence.

I ask the Tribunal to take full congizance of the minutes under cross examination of this witness before the Commission.

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he should be held responsible for the legal validity of the verdict which he is executing, but where a man as a consequence of his rank, or of the elasticity of the orders given to him, can act on his own judgment, the situation will probably be quite different. This view was not shared by the generals. On the contrary, a single soldier's disobedience is easily offset in its effect by punishment, but the disobedience of a high military leader is liable to shatter the structure of the Army, and even of the State itself.

If there is anything in the world that is indivisible, it is military obedience.

Nobody has defined the meaning and the character of a soldier's duty of obedience more correctly than the British Field Marshal, Lord Montgomery. In a speech which he made at Portsmouth on the 26th of July 1946, he declared:

"As the servant of a nation, the Army is above politics, and that must remain as it is. Its devotion is to the State, and it does not belong to the soldier to change his devotion on account of his political views. It must be made clear that the Army is not an assembly of individuals, but a fighting arm molded by discipline and controlled by the leaders. The essence of Democracy is freedom; the essence of the Army is discipline. It does not matter how intelligent the soldier is -- the Army would let the nation down if it were not accustomed to obey orders instantaneously.

The difficult problem of achieving strict obedience to orders can only be mastered in a democratic period by the inculcation of three principles.

1. The nation is something that is worthwhile;
2. The Army is the necessary arm of the nation;
3. It is the duty of the soldiers unquestioningly to obey all orders which the Army, that means the nation, gives him.

And the German generals -- according to the opinion expressed by the Prosecution, they ought not only have asked questions when they obeyed the supreme commander and the nation, but they ought to have rebelled openly!

Whoever wishes to render a just decision on this question, ought to have been once himself an Army commander in war, at the front line, and in particularly serious circumstances because there is a great difference between the Commander at a heavily contested front line, who carries the responsibility

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for the life and death of hundreds of thousands of soldiers, and an officer who has no responsibility at the front line, or who is engaged only in a quiet sector. If the military leaders, nevertheless, fought unceasingly for their soldierly conceptions, and acted in accordance with them within existing possibilities, this attitude ultimately produced no other effect than their complete elimination towards the end of the war. This is proved by a short survey of the fate of some military leaders:

Out of 17 field marshals, who were doing service in the Army ten were relieved of their functions in the course of the war.

Three lost their lives in connection with the events of the 20th of July, 1944,

Two were killed in action, one was taken prisoner, and only one single general remained in service until the end of the war without being subjected to any disciplinary action.

Of 36 Col. Generals, 26 were eliminated from their posts, among these three were executed in connection with the 20th of July, 1944, and two were dishonorably discharged.

Seven died in the field and only three remained in service until the end of the war without being subjected to disciplinary action.

Those who were subjected to disciplinary action were highly qualified officers who had given a good account of themselves in combat.

In view of what I have just said, I can sum up the position as follows:

1. Military disobedience is, and remains, a violation of duty, in war a crime punishable with the death penalty.
2. There is no duty to disobey for any soldier in the world as long as there still exists states with a sovereignty of their own.
3. Under Hitler's dictatorship, open disobedience would only have led to the destruction of the subordinate, but never to a repeal of the given orders.
4. No class has made, through its highest representatives, such great sacrifices for its conceptions as opposed to Hitler's methods as heavy as the circle of officers who are indicted before this Tribunal.

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In view of the impossibility, or of the ineffectiveness of any passive resistance, there would have remained only the method of violence, rebellion and coup d'etat. Whoever contemplated this method, had to be aware of the fact that it could not but involve the removal of Hitler, and of the leading men of the Party, in such a way, that these men were put to death. There was, therefore, at the beginning of each coup d'etat the inexorable compulsion to eliminate Hitler and the leading men of the party.

To the soldier, this meant murder and disloyalty to his oath. Even if it is demanded that the generals, for reasons of a higher world morals, ought to have sacrificed their personal honor as soldiers, where could they have received the justification for such action being carried out against the will of the nation, and then could this action have been realizable with good chances of success and for the benefit of the people? After the incorporation of the Protectorate, Hitler was at the crest of his successes and was considered by the German people as the greatest of all Germans. When Churchill said of him, on the fourth of October, 1938, that

> "Our leadership must have at least a fraction of the spirit of that German corporal, who, when everything around him had fallen to ruins, when Germany seemed to have sunk into chaos for all future, did not hesitate to march against formidable phalanx of victorious nations."

Is this not proof enough that a storm of the German nation would have blown away the generals, who would have laid violent hands on Hitler. Were the generals to have removed Hitler at a time when a peaceful settlement with Poland was still a practical possibility, when it was impossible for the German people to foresee that the war would actually come, and what consequences it would have -- as they are today openly visible to all our eyes.

Then the war came, and brought with it another, and a very decisive restriction on the military leaders. Any rebellion in war would have amounted to a catastrophe for the Reich. As long as there were victories, there would have been no chance anyway of a success of the rebellion. But when it became clear after Stalingrad that the fight was now for the naked existence of the German people, the military leaders had even less the moral right to bring about a breakdown of the front line and the whole country by a

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coup d'etat. In these days, large sections of the German people still believed in Hitler. Would the military leaders not have been rendered responsible for everything that the German nation are feeling so heavily today as a consequence of the capitulation. Can one really consider coup d'etat, disloyalty to the given oath and murder as a legal obligation of the soldier in the midst of a war for the very life and death of the nation? Who did Field Marshal von Rundstedt say in the witness stand:

"Nothing would have changed for the German people. But my name would have gone down in history as that of the greatest traitor."

How very much any such attempt was condemned to failure is proved by the unsuccessful attempt on Hitler's life on the 20th of July, 1944. Even the preparation of this attempt over a number of years and the participation of men from all walks of life were not able to secure its success.

Now, therefore, could the 129 indicted officers have successfully enforced a coup d'etat. Certainly, if they had been the closed association as which the Prosecution would so very much like to regard them, they might perhaps also have contemplated a commonly planned violent revolt, but since they were not a closed organization, since they were not politicians, but "only" soldiers, they could do nothing on their part to bring about a change of conditions. They could only obey to the last, in spite of the fact that they knew how desperate the military situation was! The German military leaders found themselves hemmed in between their rights as men and their duties as soldiers.

As citizens of the State, they might have claimed for themselves the right to refuse service to a Fuehrer and a system which, the longer the war lasted, proved the more harmful. They might thus have eluded their personal responsibility; they might have -- as the Prosecutor puts it -- "saved their skins". Perhaps they would not now be tried before this Tribunal, but by taking such a decision, they would, at the same time, have let down their soldiers, who trusted them and for whom they felt responsible. Therefore, there remained for them, as soldiers, only the duty to fight. This "duty" might in a superior sense of the word also have been to overthrow the system. In war, however, this would practically would have amounted to bringing about defeat.

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But that would have been something that no soldier could take upon himself. One cannot, for years, demand of one's soldiers to give their lives and then throw down oneself the arms and go down in history as the traitor of one's nation.

Thus, there remained for the German military leaders only the duty to fight the enemy to the last. Confronted with the tragic decision between personal rights and soldierly duties, they decided in favor of their duties, thus acted in the spirit of soldierly moral.

What other possibility would have remained open to them in order to keep away criminal things from themselves, and from their soldiers? There was only the one single possibility, to go around criminal orders, to elude them, or to transform them by additional orders in such a way that the result was in keeping with the soldier's sense of justice and decency. This they did to the limit of their possibilities in order to conduct the military war, which alone was their business, according to the rules of International Law and of humanity. If, besides this, the political and ideological war was carried on by methods which have today exposed the German people to the contempt of the world, the German generals, as a group, have had no part in this kind of war.

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CONCLUSION: I have now reached the end of my observations.

I believe I have proved

1. That the 129 military leaders, which the Prosecution want to indict, were in no respect an "organization" or "group", and represented even less a united will for the execution of criminal acts--these men are not a gang of criminals.

2. That the collection of these officers by the Prosecution under the invented collective term "General Staff" and "High Command", represents in reality a purely arbitrary combination of holders of the most varied service posts from quite different periods, and from fundamentally different branches of the Armed forces. Chosen without any real justification, and without legal necessity, the collection of these officers under this collective term, can only be considered as a deliberate slander on the institution of the General Staff, which has been taken as a model by so many Nations. What a slogan, indeed, for the International press: "The German General Staff, a criminal organization;"

I, furthermore believe I have proved:

That the military leaders in Hitler's State did not even have the possibility to participate in a political plan, or a political conspiracy, with the object of waging of war of aggression, and even less, actively to assist in it. They constantly uttered warnings, and warned again and again, and were finally themselves overun by the political leadership.

I believe finally, I have proved:

That after the outbreak of war, the military leaders engaged in passive resistance against Hitler's methods, which disregarded the rules of warfare and of humanity. They, thereby, practically prevented the commission of crimes against the rules of war and of humanity as much as it was possible, and maintained as soldiers the spirit of Christianity.

Shaould individual officers among the indicted generals have committed crimes they will know how to account for themselves. The group as a whole is not guilty of the crimes which were committed. On the contrary, this circle of officers was one of the strongholds of decent, humane, and Christian thought. Only an observer who witnessed from nearby the enormously difficult situation in which everyone of these men found himself, can do justice to their attitude. They had to settle the

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conflict of their consciences quite alone, and could not seek assistance in their distress, and the torment of their consciences by resorting to the deputies of a Parliament, to the editors of a free Press, or to prominent influential men of public life, -- as it was possible for the military leaders of the other side.

These men were persecuted with derision and hatred. They were openly, and even more in secret

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they were branded as "reactionary generals", not as "dust-covered knights of a medieval code of honor." "Not the great Hitler", but they were made responsible by Party propaganda for every military setback, they were the traitors and saboteurs to whose sinister influence all misfortunes were due. Without them, Hitler would have won his war.

The abyssmal hatred of the mass murderers from the circle around Himmler, is persecuting them even in this courtroom, and endeavors by lies and distortions, to drag them into the disaster awaiting these people, and the Prosecutor does not realize how much he contributes by his theory that Hitler had been driven by instigators and advisors further and further, and that everything was ultimately the generals' fault, to revive the halo around Hitler, so that Hitler may one day appear, not as the political criminal and the mass murderer of millions of people, but as the tragic hero who was pushed into the abyss by the gray figures who surrounded him.

Does the Prosecutor really wish to challenge the judgment of history in such a way?

History has its own method of judgment. The summary kind of judgment demanded in this case is practically unique in the history of the world. There is practically only one parallel, and it is both a warning and a lesson. On the 16th of February, 1568, a verdict rendered by the Holy Office condemned all inhabitants of the Netherlands to die as heretics, with the exception of a few specially named cases. The Duke of Alba who was devoted to his Royal master in blind fanatical obedience, was appointed executor of this mass verdict. The judgment of history on this first great manifestation of the idea of collective guilt is well-known.

History will write its own judgment on the military leaders with whom we are here concerned, and the German generals believe that they will be able to stand their ground before its verdict. Today, however, we are concerned with the verdict to be rendered by this International Military Tribunal. May it please the Tribunal not to neglect the fact that the knowledge which it possesses today of the whole development of events -- both as regards their external course and their background, was something these men did not have when

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they made the decisions, for which they are to be rendered responsible today.

These men do not fear for their lives -- they are familiar with death in all its forms -- but their anxiety is concerned with justice! May it please the Tribunal of Nurnberg to render a verdict which, as I said in my opening remarks, is uninfluenced by the passions of every day life, far removed from blind hatred and vengeance and the petty instincts of retaliation, and which, standing out, pure and unfalsified in the face of eternity and of a better future of the nations is nothing but just!

THE PRESIDENT: The Tribunal will adjourn.

(The Tribunal adjourned until 1000, 28 August 1946.)